रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 32] नई दिल्ली, अगस्त 4—अगस्त 10, 2019, शनिवार/श्रावण 13—श्रावण 19, 1941
No. 32] NEW DELHI, AUGUST 4—AUGUST 10, 2019, SATURDAY/SRAVANA 13— SRAVANA 19, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 6 फरवरी, 2019

का.आ. 1392.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद् द्वारा, केंद्र सरकार भारत के राजदूतावास, आबु धाबी में संजुला कुमारी, निजी सहायक को दिनांक 06 फ़रवरी 2019 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2015]

प्रकाश चन्द, निदेशक (कोंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 6th February, 2019

S.O. 1392.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Ms. Sanjula Kumari, Personal Assistant in Embassy of India, Abu Dhabi to perform Consular services as Assistant Consular Officer with effect from 06 February 2019.

[No. T-4330/01/2015]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 12 फरवरी, 2019

का.आ. 1393.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश। एतद् द्वारा, केंद्र सरकार भारत के दूतावास, अंतननरीवो में श्री कमलेश कुमार, निजी सहायक को दिनांक 12 फरवरी 2019 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/10/2018]

प्रकाश चन्द, निदेशक (कोंसुलर)

New Delhi, the 12th February, 2019

S.O. 1393.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Kamlesh Kumar, Personal Assistant as Assistant Consular Officer in Embassy of India, Antananarivo to perform the Consular services with effect from 12 February, 2019.

[No. T-4330/10/2018]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 12 फरवरी, 2019

का. आ. 1394.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश। एतद् द्वारा, केंद्र सरकार भारत के प्रधान कोंसलावास, जेद्दाह में श्रीमति कंचन, निजी सहायक और श्री सूरज मल, निजी सहायक को दिनांक 12 फरवरी 2019 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2015]

प्रकाश चन्द, निदेशक (कोंसुलर)

New Delhi, the 12th February, 2019

S.O. 1394.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Mrs. KANCHAN, Personal Assistant and Shri SURAJ MAL, Personal Assistant as Assistant Consular Officers in Consulate General of India, Jeddah to perform the Consular services with effect from 12 Feb, 2019.

[No. T-4330/01/2015]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 13 फरवरी, 2019

का. आ. 1395.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद् द्वारा, केंद्र सरकार भारत के उच्चायोग, माले में श्री सेबेस्टीयन के. वी., सहायक अनुभाग अधिकारी को दिनांक 13 फ़रवरी 2019 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2015]

प्रकाश चन्द, निदेशक (कोंसुलर)

New Delhi, the 13th February, 2019

S.O. 1395.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Sebastian K V, Assistant Section Officer in the High Commission of India, Male to perform Consular services as Assistant Consular Officer with effect from 13 February 2019.

[No. T-4330/01/2015]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 3 जून, 2019

का.आ. 1396.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद् द्वारा, केंद्र सरकार भारत के दूताबास डबलिन, में श्री समीर रावत, सहायक अनुभाग अधिकारी को दिनांक 03 जून 2019 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2017]

टी. अजुङ्ग्ला जमीर, निदेशक (सी.पी.वी.)

New Delhi, the 3rd June, 2019

S.O. 1396.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Sameer Rawat, Assistant Section Officer in the Embassy of India, Dublin to perform the consular services as Assistant Consular Officer with effect from 03 June 2019.

[No. T-4330/01/2017]

T. AJUNGLA JAMIR, Director (CPV)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 30 जुलाई, 2019

का. आ. 1397.—केन्द्र सरकार, एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तर प्रदेश राज्य सरकार, गृह (पुलिस) सेक्शन-4 सं. 01 सी.बी.आई/VI-पी-4-2019-6(44)बी/2019 दिनांक 29 जुलाई, 2019 के द्वारा प्राप्त सहमति से पुलिस थाना गुरूबक्शगंज जिला रायबरेली, उत्तर प्रदेश में भा.दं.संहिता की धारा 302/307/506/120-बी के अधीन दर्ज मामला अपराध सं. 0305/2019 के अपराधों की जांच करने तथा उससे सम्बद्ध एक या अधिक उक्त वर्णित अपराधों में किए गए प्रयासों, दुष्प्रेरणाओं और षड्यंत्रों तथा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध(धों) का अन्वेषण करने के लिए के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त उत्तर प्रदेश राज्य में करती है।

[फा. सं. 228/16/2019-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 30th July, 2019

S.O. 1397.—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Uttar Pradesh, Home (Police) Section-4 No. 01 C.B.I./VI-P-4-2019-6(44)B/2019 dated Lucknow 29 July, 2019 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in whole of the State of Uttar Pradesh for investigation of offences of Case Crime No. 0305/2019 u/s 302/307/506/120-B IPC P.S. Gurubakshganj Dist. Raebareli, Uttar Pradesh and attempts, abetments and conspiracies in relation to or in connection with one or more of the offences mentioned above and any other offence(s) committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/16/2019-AVD-II]

S.P.R. TRIPATHI, Under Secy.

विद्युत मंत्रालय

नई दिल्ली, 1 अगस्त, 2019

का.आ. 1398.— केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में विद्युत मंत्रालय के प्रशासनिक नियंत्रणाधीन पावर सिस्टम ऑपरेशन कारपोरेशन लिमिटेड के दक्षिण क्षेत्रीय भार प्रेषण केंद्र, 29, रेस कोर्स क्रॉस रोड, बेंगलुरू-560009 जिसके 80 प्रतिशत कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतदद्वारा अधिसूचित करती है।

[सं. 11011/9/2017-हिंदी]

राज पाल, आर्थिक सलाहकार

MINISTRY OF POWER

New Delhi, the 1st August, 2019

S.O. 1398.—In pursuance of Sub Rule (4) of Rule 10 of the Official Languages (use for official purpose of the Union) Rules, 1976, the Central Government hereby notify the Southern Regional Load Despatch Centre, 29, Race Course Cross Road, Bengaluru-560009 of Power System Operation Corporation Ltd. under the administrative control of Ministry of Power, where 80% of the staff have acquired working knowledge of Hindi:

[No. 11011/9/2017-Hindi]

RAJ PAL, Economic Adviser

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1399.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स प्रिंसिपल, जवाहर नवोदय विद्यालय, अंबाला, हरियाणा और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 285/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.07.2019 को प्राप्त हुआ था।

[सं. एल-42012/46/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 2nd August, 2019

S.O. 1399.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. No. 285/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Principal, Jawahar Navodaya Vidhalaya, Ambala, Haryana and their workmen which were received by the Central Government on 30.07.2019.

[No. L-42012/46/2013-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No. 285/2013

Registered on:-27.08.2013

Sh. Raj Kumar, S/o Sh. Banta Ram, R/o Village Kaula,
Distt. Ambala. …Workman

Versus

1. The Secretary, An Autonomous Organisation Under Ministry of Human Resource Development, Department of School Education and Literacy, Government of India, New Delhi.
2. Principal, Jawahar Navodaya Vidhalaya, Village Kaulan,
Tehsil & District Ambala, Haryana. ...Respondents

AWARD

Passed on:-11.07.2019

Central Government vide Notification No. L-42012/46/2013-IR(DU) Dated 20.08.2013, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of the Principal Jawahar Navodaya Vidyalaya, Kaulan, Distt. Ambala(Haryana) in terminating the services of Sh. Raj Kumar, S/o Sh. Banta Singh, Ex-Mess-Helper w.e.f. June, 2011 is just & legal? To what relief the workman is entitled to and from which date?"**

1. Both the parties were served with notices. The workwoman/claimant filed his statement of claim with the averment that he was appointed as Mess Helper before February 2006 and his services were terminated in June 2011 without disclosing any reason. It is further alleged that he was being paid his salary by cash and some time by cheque and he worked with the respondent no.2 from 6 am to 9 pm but he was not paid his overtime wages for extra work. The

workman/claimant has worked with management without any complaint and the management has assured to regularize his services when sanctioned post will be created. The workman/claimant was paid less wages comparison to the minimum wages applicable in Haryana State. The workman requested to the management many times to get his services regularized and pay him at least minimum wages as per rules but of no use. The workman had worked with the management from 2006 to May 2011 continuously and has completed 240 days in a preceding year. Management without serving one month notice, terminated the service of the workman and the management has not paid any retrenchment compensation to the applicant. It is therefore prayed that claimant be reinstated in service with full back wages.

2. Respondents have filed its written statement with the averment that the provisions of the Industrial Disputes Act, 1947 are not applicable in the present case as defendant-management does not come within the definition of industry as defined under Section 2-J of the Act. It is further alleged that claimant/workman was engaged by the then Principal of the school as Mess Helper on temporary arrangement on need basis as per requirement as there was no regular post of Mess Helper sanctioned in the JawaharNavodayaVidalaya. The school remains closed for three months in the year 2011 and during this time, services of casual worker on need basis were not taken. The workman used to work as a part time worker in the respondent-school for two hours each during breakfast, lunch and dinner and rest of the period he used to do his other private works. The workman absented himself willfully after summer vacation of the year 2011 and did not come on his duty when the school reopened after summer vacation. Thus, he himself abandoned the said job and never came to the school thereafter. Meanwhile, post of the Mess Helper was created vide NVS RO Jaipur letter No.83-1(create Post)/NVS-JR/ESTT/2008/7993, dated 22.09.2009 and after required formality and in absence of any eligible candidate registered in Employment Exchange, the post was advertised on 22.09.2010 in 'DainikJagaran' having large circulation in the area. The workman along with others applied for the post and he along with other candidates interviewed by the selection committee comprising District Education Officer, Ambala Principal JNV Kaulan, Ambala. Namely Raj Kumar S/o Puran Chand, Sewa Ram S/o Maha Singh, Sarwan Kumar S/o Teju Lal were selected and the list of these three candidates was sent to the NVS RO Jaipur, for selection of the candidate and ultimately Sewa Ram S/o Maha Singh was selected as Mess Helper to work in the mess of the respondent-school. The workman was not found suitable in comparison to the above named three candidates as such, he could not claim the entitlement of said post. The provision of Section 25-F, 25-G and 25-H are not applicable in the present case. The workman has never completed 240 days on preceding year of the alleged retrenchment as such, there is no violation of any provision of the ID Act, 1947. The job of the workman was for limited period hence, there is no question of overtime wages as is claimed by the workman. It is wrong to say that respondent had assured the claimant to regularize his service when sanctioned post would be sanction from the management. It is further denied that the services of the claimant on June, 2011 has been terminated by respondent no.2 It is correct that workman has sent a false notice through the advocate which was suitably replied by the management. The workman used to be paid from the contingency fund of the school mess as a daily wager amounting Rs.125/- per day as per the working days. The claimant had himself abandoned the job hence, question of serving one month salary in lieu of notice to the applicant does not arise. There is no question of paying the retrenchment compensation to the applicant hence it is prayed that present reference being devoid of merit is liable to be dismissed with cost.

3. Both the parties have been given opportunity to file evidence. Workman Rajesh Kumar has submitted his affidavit as Ex.A1 and cross-examined by management-counsel. The claimant Raj Kumar has accepted that there was no publication of the post when he was appointed by the management. He has denied that he worked only for 2 hours in morning, two hours in afternoon and 2 hours in the evening. He has accepted that during summer vacations he was not performing his duties and denied the suggestion that he himself abandoned the job after the vacation of June 2011. This witness has accepted that he is ready to join the duties on his previous terms and conditions. He has also accepted that he had applied for the post of regular Mess Helper in the year 2011 but was not selected. His attendance was marked in the attendance register and he has the photocopy of the attendance register(though it is not filed on record).

4. Management has submitted affidavit of Abha Gupta, Principal of Jawahar Navodaya Vidalaya as Ex.MW1 along with Ex.M2 which is an advertisement for the post of Mess Helper published in newspaper, M3 appointment letter issued to the claimant for joining service and M4 terms and conditions of service. Management has also submitted affidavit of DiptiBhatnagar, presently working as Principal, JawaharNavodayaVidalaya, Ambala.

5. After submission of affidavit by the witnesses of the management, claimant and his counsel did not turn up for cross-examination and participating in further proceeding of the case hence, after giving reasonable opportunity, this Tribunal closed the opportunity of the cross-examination of the claimant from the management witnesses vide order dated 08.05.2019 and fixed for argument.

6. Workman and his counsel did not turn up at the stage of argument hence, argument of learned counsel of management is heard at length.

7. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workwoman to adduce evidence to prove factum of his

employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh (2005) 8, Supreme Court Cases 481*** as well as ***Director Fisheries Terminated Division Vs. BhikubhaiMeghajibhaiGavda(2012) 1 SCC 47.***

8. There is hardly any dispute with the preposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is bit different, inasmuch as the management in its written statement has clearly admitted the factum of employment of the claimant as it has been stated that claimant was engaged by the Principals of the JawaharNavodayaVidalaya as Mess Helper on February 2006 as a casual worker as a temporary arrangement on need basis and he worked upto June 2011 before the closer of the school for summer vacation in the year 2010. As such, it clearly establishes relationship of employer-employee between the management and claimant. In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011, Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under:-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of the aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. In these circumstances, it stands proved that there existed relationship of employer-employee between the parties.

9. Equally settled is the position of law that when relationship of employer-employee stands proved between the parties, then onus will shift upon the employer/management to show that the claimant has not worked for 240 days or more in a calendar year or that the services of the claimant was terminated in accordance with the provisions of the Act. It is specific case of the workman/claimant that he was engaged as Mess Helper by the management in February 2006 and have worked satisfactorily till June 2011.

10. I may mention that the management has not adduce any documentary evidence whatsoever to rebut the case of the claimant or to substantiate that the workman/claimant who was engaged in the year 2006 had not worked for 240 days prior to his termination in June 2011 before the summer vacation. Undoubtedly, the witnesses Abha Gupta and Dipti Bhatnagar have alleged in their affidavits that workman had not completed 240 days on the preceding year before his alleged termination but management has not filed any documents whatsoever regarding the factum of proof that claimant has not served 240 days as is alleged in its claim statement. The management has not filed on record the attendance register or vouchers for the relevant period so as to rebut the claim of the workman/claimant that the workman had not worked for 240 days in a preceding calendar year. The management has not alleged anything in its written statement nor in affidavits filed as evidence nor during the course of arguments that why it has not submitted the documentary record regarding the attendance register, payment voucher related to the workman for the relevant period. In these circumstances, this Tribunal is constraint to draw adverse inference against the management under Section 114(g) of the Evidence Act for non-production of requisite record and to believe the version of the claimant that he worked with the management for 240 days in a calendar year.

11. There is another aspect of the matter regarding the retrenchment or abandonment of the job by the management or workman himself. Learned counsel of the management contended that workman has abandoned the job at his own without prior information and did not return to join the school after the opening of the school in the year 2011 after summer vacation hence, question of issuing notice or payment of salary for one month in lieu of retrenchment or termination is not required as per law. It is relevant and pertinent to mention that either party has not adduced any cogent evidence in this connection, and if it is so, no material has been produced by the workman to substantiate that the workman has not allowed to discharged the duties of the post by issuing communication to the respondent-management. At the same time, the respondent-management has not issued any notice in writing asking the workman to report back to duty, if he remained unauthorised absent or absented himself after summer vacation in the year 2011 as contended by the learned counsel for the management. There is no correspondence between the workman and management in respect of service condition of the workman. Hon'ble Punjab & Haryana High Court dealing with the ***Writ Petition No.8898/1994 (O&M) dated 30.11.2016, 2017 LLR 95, Kali Ram vs. Presiding Officer and Another,*** has held that in such a situation, the contention of the respondent-management that workman has abandoned the services is not acceptable because of

non-issuance of show cause notice to join the service back to the workman. Having regard to the conduct of workman and respondent-management insofar as perusing the issue relating to taking back to duty or abandoned the service is concerned, there are lapses and it is the management, who has to issue show cause notice to join service. Thus, Hon'ble High Court has laid down that it was the duty of management at least to issue a show cause notice regarding the joining of service to the workman but that has not done in this case. The facts of the case in hand is same hence, to my mind it is not the workman who has left his job on his own rather than he was forced to left the work by the management.

12. Now the vital question arises for consideration is whether the alleged termination of the claimant from the service by the management is in accordance with the law or in accordance to Section 25-F of the Act. It is neither the case of the management that notice was given to the workman prior to the termination of his services after summer vacation in the year 2011 nor any such evidence has been adduced by the management on record. So far as the argument of the learned counsel of the management is concerned that management is not required to give any notice or one month salary in lieu of notice is not in consonance with the settled position of law and provision of Section 25-F of the Act. Learned counsel argued that workman has admittedly interviewed according to law and could not be selected by the duly formed committee hence, question of issuing notice for his termination and one month salary is not required. I am not convinced with the argument of the learned counsel of the management on the basis of the observation made above regarding the abandonment of the job by the workman. To my mind, even, if, any other person is selected as Helper by the committee, management is required to sent notice to the workman for clarification his position and before dispensing his service from the school one month salary is also required to be given by the management as per provisions of Section 25-F of the Act.

13. Learned counsel of the management has contended that workman has not approached to the management for his renewal of service instead of preferring this reference before the appropriate government. Learned counsel further argued that management has offered joining of the workman in the school at the behest of this Tribunal during the pendency of the petition vide its letter Ex.M4 dated 17.08.2015 but he did not turn up before the Principal for rejoining of the school. Admittedly, there is no evidence submitted on behalf of the workman regarding his non-joining of the school in compliance to the letter sent to the workman but during the course of cross-examination, workman has admitted that he is ready to join the duties on the previous terms and conditions. The question regarding the joining of the workman in school put by the management-counsel indicates that there is a scope for the employment of the workman in the JawaharNavodayaVidhalaya.

14. Having regard to the legal position discussed above, the services of the workman, as is observed above, has been retrenched or terminated by the management against the settled provisions of Section 25 of the Industrial Disputes Act, 1947. The fact that the claimant/workman is interested to rejoin the duties on previous terms and conditions before his alleged termination, this Tribunal is of the view that claimant herein is entitled for reinstatement without any back wages as he was offered job in August 2015 and his job was of daily wager/temporary in nature and there is nothing on record to prove that he was not gainfully employed after his retrenchment/termination and the award is passed accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1400.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स प्रिंसिपल, जवाहर नवोदय विद्यालय, अंबाला, हरियाणा और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 284/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.07.2019 को प्राप्त हुए थे।

[सं. एल-42012/45/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 2nd August, 2019

S.O. 1400.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. No. 284/2013) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Principal, Jawahar NavodayaVidhalaya, Ambala, Haryana and their workmen which were received by the Central Government on 30.07.2019.

[No. L-42012/45/2013-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 284/2013

Registered on:-27.08.2013

Smt. Babli Devi, W/o Sh. Lal Chand, R/o VPO Nagal,
Hisar Road, Distt.Ambala. …Workman

Versus

JawaharNavodayaVidhalaya through its Principal Kaulan, Distt.Ambala. …Management

AWARD

Passed on:-11.07.2019

Central Government vide Notification No. L-42012/45/2013-IR(DU) Dated 21.08.2013, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of the Principal JawaharNavodayaVidyalaya, Kaulan, Distt. Ambala(Haryana) in terminating the services of Smt. Babli W/o Sh. Lal Chand, Ex-attendant w.e.f. 30.04.2010 is just & legal? To what relief the workman is entitled to and from which date?"

1. Both the parties were served with notices. The workwoman/claimant filed her statement of claim with the averment that she was appointed as Attendant on 01.09.2007 and her services were terminated on 30.04.2010 without disclosing any reason. It is further alleged that she had been working satisfactorily and conduct of the claimant remained good throughout the tenure of her services as such, there was no complaint about her work and conduct. Claimant had completed more than 240 days continuous service as required under Section 25-B of the Industrial Disputes Act. Management was required to serve notice in writing indicating the reasons of terminating the service of the workwoman and the management was further required to pay wages in lieu of such notice as is mentioned in the Industrial Disputes Act, 1947. The management has not paid any retrenchment compensation to the applicant. The management has not followed the principle of first come last go at the time of the termination of the workman and retained juniors to the applicant in service against the violation of Section 25-G of the Act. The management has also engaged Smt. Harbhajan Kaur and Anita after terminating the services of the claimant without giving any preference as required under Section 25-H of the Act. The claimant had not left the job of his own as is stated in the reply submitted by the management. The management has not followed the procedure prescribed under the Industrial Disputes Act before terminating the services of the claimant. It is therefore prayed that claimant be reinstated in service with full back wages.

2. Management has filed its written statement through Smt. Abha Gupta, Principal, JawaharNavodayaVidalaya, alleging therein that the Industrial Disputes Act is not applicable in the present case as claimant is neither a workwoman as defined under Section 2(s) of the Industrial Disputes Act nor respondent-management comes within the definition of industry by virtue of its organization and registration under Societies Act, 1860. There was no regular post of attendant sanctioned in the JawaharNavodayaVidyala and claimant was engaged as attendant by the then Principal of the school as a casual on need basis for temporary arrangement. There was neither sanctioned post nor claimant was appointed against it by duly appointment letter. The school remains closed for three months in a year 2010 and the services of the daily wager workers were not being taken. The engagement of the workwoman was purely temporary without any right to continue the same and the wages was paid from the contingency fund of the school. After the expiry of the summer vacation, the workwoman willfully absented herself and did not join the duty after reopening of the school. Workwoman has never completed 240 days preceding to the abandonment of her service hence, there was no violation of any of the

Industrial Dispute Act. Management has not terminated the services of the claimant that is why during the conciliation proceedings before the Assistant LabourCommissioner(Central), Karnal, management has offered to the workwoman to work as gate keeper from 4.00 pm to 7.00 pm in the evening hours for Rs.100/- per day but she refused to compromise. In fact from 1st May 2010 School was closed due to summer break and daily wagers are asked to come after the opening of the school but the claimant did not turn up after summer vacation hence, question of her termination does not arise. It is further alleged that Miss Harbhajan Kaur did not serve this institution and with regard to miss Anita it is submitted that she worked for few months and left at her own will. It is also submitted that the answering management has not violated any of the provision of the Industrial Disputes Act, 1947 as is alleged by the claimant in her petition. It is therefore prayed that present reference being devoid of merit, be dismissed with costs.

3. Both the parties have been given opportunity to file evidence. Workwoman Smt. Babli Devi has submitted his affidavit as Ex.A1 and cross-examined by management-counsel.

4. Management has submitted affidavit of Abha Gupta, Principal of JawaharNavodayaVidalaya as Ex.MW1 along with letter Ex.M2 issued to the claimant for joining service after the institution of the claim petition. Management has also submitted affidavit of Dipti Bhatnagar, presently working as Principal, JawaharNavodayaVidalaya, Ambala along with documents regarding the work done by the claimant during her tenure from September 2007 upto April 2010.

5. After submission of affidavit by the witnesses of the management, claimant and her counsel did not turn up for cross-examination and participating in further proceeding of the case hence, after giving reasonable opportunity, this Tribunal closed the opportunity of the cross-examination of the claimant from the management witnesses vide order dated 08.05.2019 and fixed for argument.

6. Workwoman and her counsel did not turn up at the stage of argument hence, argument of learned counsel of management heard at length.

7. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workwoman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh (2005) 8, Supreme Court Cases 481*** as well as ***Director Fisheries Terminated Division Vs. BhikubhaiMeghajibhaiGavda(2012) 1 SCC 47.***

8. There is hardly any dispute with the preposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is bit different, inasmuch as the management in its written statement has clearly admitted the factum of employment of the claimant as it has been stated that claimant was engaged by the Principal of the JawaharNavodayaVidalaya as attendant on 1.9.2007 as a casual worker for temporary arrangement on need basis and she worked upto 30.04.2010 before the closer of the school for summer vacation in the year 2010. As such, it clearly establishes relationship of employer-employee between the management and claimant. In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011, Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under:-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of the aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. In these circumstances, it stands proved that there existed relationship of employer-employee between the parties.

9. Equally settled is the position of law that when relationship of employer-employee stands proved between the parties, then onus will shift upon the employer/management to show that the claimant has not worked for 240 days or more in a calendar year or that the services of the claimant was terminated in accordance with the provisions of the Act. It is specific case of the workman/claimant that she was engaged as attendant by the management on 1.9.2007 and have worked satisfactorily till 30.4.2010 when her services were dispensed with by the management without assigning any reason. She in fact had completed more than 240 days of service in each calendar year but despite that no notice or

compensation in lieu of notice was given to her prior to her termination/retrenchment of her services by the management. The affidavit filed by the workwoman/claimant is in line with the averments made in the claim petition. This fact is denied by the management that claimant worked 240 days in each preceding calendar year not only in its written statement but also in the affidavit of the management-witness Abha Gupta and DiptiBhatnagar filed as evidence. It is pertinent to mention that no documentary evidence had been adduced by the claimant regarding her appointment/termination or attendance during the tenure of her service with the management in order to prove that she had completed 240 days preceding year of her termination. Contrary to this, respondent-management has submitted documents relating to the working days of the claimant from the month of September 2007 upto 30.04.2010 duly signed by the Principal of JawaharNavodayaVidhalaya. The perusal of the document reveals that in total claimant had worked 833 days i.e. 2 years 3 months and 13 days. In fact this document reveals the total working days of each month from the year 2007 to April 2010 and the calculation of the number of working days as is mentioned in the document regarding the year 2008 and 2009 does not disclose that she had worked 240 days on preceding year before her alleged termination. Unfortunately, claimant and her counsel did not appear in subsequent stage of proceeding before the Tribunal at the stage of the evidence of the management and these witnesses have not been cross-examined by the claimant. Thus, facts alleged in the affidavit of witness Abha Gupta and Dipti Bhatnagar and attached documents of the working days of claimant remains uncontroverted in the absence of any document filed by the claimant. Surprisingly, claimant has not moved any application for summoning of the attendance register or payment register for the relevant period to show that she had worked 240 days in preceding year before her termination by the management. Thus, oral evidence filed by the workman regarding her service for 240 days in preceding year of the termination is not sufficient to conclude that she has worked with the management for over 240 days in a calendar year.

10. This is a specific case of the claimant/workwoman that she had retrenched or terminated by the management on 30.04.2010 without disclosing any reason. There is nothing in the pleading of the claimant that who was the person who orally terminated her services on 30.04.2010 and what effort is made by her after opening of the school in the month of July 2010. In this connection, learned counsel of the management argued that in fact she had abandoned her job on 30.04.2010 and did not turn up for rendering her service from 1.7.2010 when school re-opened again for academic session. Learned counsel vehemently argued that though no notice is issued by the management to the claimant to join the school after re-opening but this Tribunal has to decide this factum on the basis of the preponderance of the probability being the case of Industrial Disputes Act as is held by the Hon'ble Supreme Court in the cases of ***Union of India Vs. Sardar Bahadur(1974)4 SCC 618, R.S Singh Vs. State of Punjab and other(1999)8 SCC page 90,*** and in the case of ***State Bank of India Vs. Narender Kumar Pandey, Civil Appeal No.263/2013 dated 14.01.2013.*** Learned counsel of the management while advancing the argument has drawn my attention towards the facts alleged in the written statement supported by the witnesses of the management Abha Gupta and Dipti Bhatnagar through her affidavit. In Para 10 of the written statement, management has alleged that claimant submitted demand notice before the Assistant Labour Commissioner after lapse of about two years. Had the services of the workwoman was terminated by the management in the month of April 2010? She would have agitated it before the management or before the Assistant Labour Commissioner after her alleged termination in the month of April 2010. Learned counsel vehemently argued that the conduct of the claimant shows that she herself had abandoned her services as daily wager that is why she has filed the claim statement after a lapse of two years. It is pertinent to mention that claimant has neither filed any replication regarding this fact nor has submitted anything in her affidavit filed as evidence which weighted the arguments advanced by the learned counsel of the management.

11. In the last limb of argument, learned counsel of management argued that in fact claimant is not interested to render her services with the management instead she wants some compensation in the garb of the petition filed before this Tribunal. Learned counsel has further drawn my attention towards the zimini order of the Tribunal regarding the settlement of the dispute between the parties in compliance of which management has issued a letter to the claimant to join the services in the management. Witness Abha Gupta has submitted a photocopy of the letter dated 17.08.2015 Ex.M2 along with her affidavit Ex.M1 which reveals that claimant was invited by the management to join management on 20.08.2015 but there is nothing on record to show that claimant visited the management-institution in pursuance to the letter issued by the Principal of the JawaharNavodayaVidhalaya for her reinstatement. The conduct of the workwoman is ample proof that she is really not interested to render her services to the management as is pleaded in the petition. Undoubtedly, prayer is made in ID petition for the reinstatement but in spite of the offer reluctance of workwoman to join the management nullify the prayer in the claim petition rather it proved that she is interested to get some compensation from the management.

12. Having regard to the legal position discussed above regarding the proof of the fact this Tribunal is of the firm view that claimant has failed to prove that she had worked for 240 days before the preceding year of her alleged

termination and entitled one month salary in lieu of notice as is mentioned under Section 25 of the Industrial Disputes Act, 1947. Similarly, there is nothing on record to prove that management has disobeyed any of the provisions of Section 25 of the Industrial Disputes Act, 1947 as is alleged by the workwoman in her claim petition. Hence, she is not entitled for any relief from the management by virtue of the reference made to this Tribunal by the Central Government. The award is answered accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 30 जुलाई, 2019

का. आ. 1401.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बडौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ सं. 19/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.07.2019 को प्राप्त हुआ था।

[सं. एल–12012/6/2009–आईआर (बी–II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 30th July, 2019

S.O. 1401.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2009) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Bangalore as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 30.07.2019.

[No. L-12012/6/2009-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 09TH JULY 2019

PRESENT : Justice Smt. Rathnakala, Presiding Officer

CR 19/2009

I Party	II Party
Sh. B. Sadashiva Adyantaya, S/o Late Sh. B. Subbaiah Adyantaya, R/a Devashya House, Market Road, Sullia, Dakshina Kannada Distt.	The General Manager (IR) Management of Bank of Baroda, No. 42/1, M.G. Road, Trinity Circle, Bangalore - 560 001.

Appearance

Advocate for I Party : Mr. B.D. Kuttappa

Advocate for II Party : Mr. Pradeep S Sawkar

AWARD

The Central Government vide OrderNo. L-12012/6/2009/IR(B-II) dated 29.04.2009 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of Vijaya Bank in Terminating the services of Shri B. Sadashiva Adyantaya, on the ground of 'voluntary cessation of services' w.e.f 03.05.2006 is legal and justified? What relief the said workman is entitled?"

1. It is the case of the 1st Party workman that, he joined the service of the 2nd Party (erstwhile Vijaya Bank prior to its amalgamation with Bank of Baroda) on 30.12.1976 at Regional Office Delhi; while working at Aranthodu Branch he was transferred to Lead Bank, Haveri. Due to Medical grounds he could not report at the transferred place. He requested the Management to retain him in Dakshina Kannada District on Medical ground but, same was not considered. On 20.03.2003 and on 15.04.2003 he wrote letters to the 2nd Party. On 28.06.2004, 2nd Party addressed a letter to him informing that he has remained absent from duty unauthorizedly from 15.03.2004; in the said letter it was stated that, vide letter dated 06.04.2004 he was asked to report at the Lead Bank Haveri within 3 days from the date of receipt of the said letter. He replied to the 2nd Party on 10.07.2004 informing that, he could not be able to go and report to work on account of his Health problem; he received another letter dated 03.08.2004 for which he has submitted his explanation.

2. It is the further case of the 1st Party that, he came across Udayavani Daily Newspaper dated 07.03.2006 in which he was called upon to report to work within 30 days and submit his explanation for his unauthorised absence, otherwise it would be deemed that he has voluntarily retired from service of the Bank on expiry of the said period etc. By way of telegram dated 10.04.2006 and subsequent letter dated 22.04.2006 he informed the 2nd Party that he has not fully recovered from his ailment and was advised to take treatment for another 10 days. He requested to permit him to attend the Lead Bank, Haveri after 29.04.2006, he had also enclosed necessary Medical Certificates; he received a letter dated 03.05.2006 from the D.G.M/Disciplinary Authority by which it was informed that 2nd Party decided to strike off his name from Muster rolls by invoking the procedure laid down by Clause 33(VIII) of Bipartite Settlement and he ceases to be in the service of the Bank from the date of the said order. He preferred an appeal against the order of the Disciplinary Authority which came to be rejected.

3. It is further stated for the 1st Party that, the 2nd Party has not followed the procedure contemplated by Clause 33(VIII) of Bipartite Settlement. The action of the 2nd Party in striking off his name and treating him as deemed to be voluntarily retired from service amounts to illegal termination. Having alleged that he remained absent voluntarily which amounts to misconduct as per Bipartite Settlement, the 2nd Party ought to have held enquiry against him. But no Charge Sheet is issued to him and Principle of Natural Justice is not followed. He is unemployed and has large family to maintain.

4. The 2nd Party in their statement countered the claim statement averments that, the Medical Certificates submitted by the 1st Party with his letter dated 20.03.2003 were referred to the Bank's visiting Medical Officer who opined that 1st Party does not come under clause 7.6 of the transfer policy. Thereafter transfer order dated 23.04.2003 was issued to him, by transferring him to Regional Office, Hubli for further posting. He was relieved from Aranthodu Branch on 23.05.2003 and he reported to duty at Lead Bank, Haveri at 30.05.2003. He remained absent from 22.07.2003 to 25.10.2003, 04.12.2003 to 10.12.2003, 15.12.2003, 20.01.2004 and from 03.02.2004 to 09.02.2004 for the above period on his leave application leave was sanctioned. He remained absent form 15.03.2004 without prior sanction of leave and without submitting leave application as per the Rules of the Bank. The 2nd Party vide letter dated 03.08.2004 informed that his absence from duty without complying the leave rules of the Bank amounts to misconduct. He was instructed to report to duty at Lead Bank Officer, Haveri within 3 days of the receipt of the letter. He submitted a letter along with leave application and Medical Certificate dated 26.07.2004. He was subjected to Medical examination through Doctor O.S. Srirangappa MD wherein the Doctor opined that he was fit to duty.

5. It is further stated that, the Lead Bank, Haveri reported to Regional Office that, the 1st Party is absent from 15.03.2004 without prior sanction and without submitting leave application as per the leave rules of the Bank. The Regional Officer vide letter dated 06.07.2004 instructed him to report for duty at Lead Bank, Haveri within 3 days and submit his explanation. The 1st Party vide letter dated 10.07.2004 advanced medical grounds for his absence and undertook to report to duty before 25.07.2004 without fail. He was informed that his absence from 15.03.2004 is treated as unauthorized. He submitted leave application dated 29.11.2004 seeking 26 days leave along with a Medical Certificate, he submitted another letter dated 24.12.2004 for a further period of 30 days and he had also sent Medical Certificate issued by his Doctor. Based on the provisions of 8th Bipartite Settlement relating to Voluntary Cessation of employment 2nd Party issued notices to him dated 12.12.2005, 03.02.2006. Vide further letter he was informed that in case he fails to report to duty it would be treated as voluntary retirement and his name will be struck off from the muster rolls of the 2nd Party. Another letter issued to him dated 07.03.2006 returned unserved with the endorsement 'Not known'. Final notice was published in Udayavani Mangalore Edition dated 12.03.2006 calling upon him to report for duty at the Branch within 30 days of publication of the notice. He replied to the Newspaper notice by way of letter that he will join duty at Lead Bank Office Haveri on or before 22.04.2006 with necessary medical certificate for reference, but failed to report. The Competent Authority invoked the provisions of clause 33 of the 8th Bipartite Settlement and passed order on 03.05.2006 that he is deemed to have voluntarily vacated his employment and his name is struck off

from the Muster Rolls of the Bank. The present dispute is raised after a lapse of 2 years indicating that he is not interested.

On completion of pleadings both parties have adduced evidence.

6. The 1st Party's his relieve from Aranthodu Branch from 25.03.2003, his report to duty at Lead Bank, Haveri at 30.05.2003 and subsequent absence are not in dispute. While the 2nd Party maintains that, in accordance with the provisions of 8th Bipartite Settlement relating to voluntary cessation of employment, he was issued 2 notices calling upon him to attend for duty within 30 days and submit explanation for his unauthorised absence, and final notice was published in Udayavani Mangalore Edition dated 12.03.2006, since he failed to report, by invoking clause 33(VIII) of Bipartite Settlement, order was passed on 03.05.2006 that he is deemed to have voluntarily vacated the employment and his name is struck off from muster roll.

7. The Voluntary Cessation of Employment as quoted by both parties reads thus:-

(i) When an employee absents himself from work for a period of 90 or more consecutive days without prior sanction from the Competent Authority or beyond the period of leave sanctioned originally including any extension thereof or when there is satisfactory evidence that he has taken up employment in India or outside, the management at any time thereafter may give a notice to the employee at his last known address as recorded with the Bank calling upon him to report for work within 30 days of the date of notice.

Unless the employee reports for work within 30 days of the notice or gives an explanation for his absence within the period of 30 days satisfying the management inter alia that he has not taken up another employment or avocation, the employee shall be given a further notice to report for work within 30 days of the notice failing which the employee will be deemed to have voluntarily vacated the employment on the expiry of the said notice and advised accordingly by registered post.

In the event of the employee submitting a satisfactory reply, he shall be permitted to report for work thereafter within 30 days from the date of expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules/conditions of service.

If the employee fails to report for work within this 30 days period, then he shall be given final notice to report for work within 30 days of this notice failing which, the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

(ii) If an employee again absents himself for the second time within a period of 30 days without submitting any application and obtaining sanction, thereof, after reporting for duty in response to the first notice given after 90 days' of absence or within the 30 days period granted to him for reporting to work on his submitting a satisfactory reply to the first notice, a further notice shall be given after 30 days of such absence giving him 30 days' time to report. If he fails to report for work or reports for work in response to the notice but absents himself a third time from work within a period of 30 days without prior sanction, his name shall be struck off from the rolls of the establishment after 30 days of such absence under intimation to him by registered post deeming that he has voluntarily vacated his appointment.

(iii) Any notice under this clause shall be in a language understood by the employee concerned. The notice shall be sent to him by registered post with acknowledgement due. Where the notice under this clause is sent to the employee by registered post acknowledgement due at the last recorded address communicated in writing by the employee and acknowledged by the bank, the same shall be deemed as good and proper service.

8. Written argument is submitted by 2nd Party.

Sh. BDK learned counsel for the 1st Party while taking me through the provisions of clause 33(III) of Bipartite Settlement submits that, the mode of service of notice contemplated by the above provision is by way of registered post acknowledgment due only. Admittedly both registered posts were addressed to the 1st Party at his address 'Devasya House, behind Post Office, Temple Market Road, Sullia, P.O (D.K)'. Both returned unserved with the endorsement 'House locked'/'not known'. The 1st Party has produced a Certificate from the Food Inspector of the Sullia Taluk, stating that he is not residing at Devasya, Sullia, Kasaba Village since May 2003 and he is not issued Ration Card. To the knowledge of the 2nd Party he had shifted his residence to Barebettu House, Kolnadu Village, Batwal Taluk, Dakshina Kannada, instead of marking the notices to his proper address the Bank had sent the notices to the address at Devasya Sullia. To invoke its jurisdiction under clause 33(III) of 8th Bipartite Settlement the 2nd Party was required to strictly abide by the procedure contemplated therein i.e. issue of notice through RPAD which they have omitted. Hence, the order to strike off his name from the muster roll on the ground of voluntary vacation of employment is illegal and

deserves to be set aside. The allegation of unauthorised absence against the 1st Party since amounts to misconduct, the 2nd Party ought to have conducted a Departmental Enquiry to take Disciplinary Action against him. Contrarily they have taken the short cut method of treating his case as Voluntary Cessation of service.

9. Sh. BDK further submits that, the 1st Party workman crossed the age of superannuation in the year 2012. Though there is no scope of his reinstatement, monetary benefit equivalent to the amount he would have earned had if he was in service up to the age of superannuation may be awarded.

Reliance is placed on the following judgments:—

(i) LAWS (SC) 2009 4 86, between Regional Manager, Central Bank of India vs Vijay Krishna Neema, Civil Appeal No. 2242/2009 and SLP (C) 2369/2007, Dated 08.04.2009.

(ii) LAWS (MAD) 2011 1 363, between Indian Bank vs S. Maheswari, W.P. Nos. 16490/1997 and 17493/1998, Dated 11.01.2011.

(iii) LAWS (CAL) 2010 4 46, between Shiw Kumar Ram vs Union of India, W.P. No. 13460/2008, Dated 08.04.2010.

10. The mode of service of notice is a vexed question which needs to be addressed at the first instance. The letter transactions between the Parties are placed on record by both of them. All the while the 1st Party has been mentioning his address as Staff Code No. 8324, Vijaya Bank, Lead Bank, Haveri. It is only after coming to know that vide order dated 03.05.2006 his service came to be ceased, he addressed a letter Ex W-12 to the Deputy General Manager, in the said letter at para 2, he takes objection against the 2nd Party for sending the letters to his Sullia address. Relevant lines from his letter Ex W-12 are reproduced below.

Thus *soon I fell ill from 29.11.2004 I wrote a letter to LDM, Haveri (reply to their letter LBM-RKBY F64 C670/04 dated 18.12.2004) wherein I clearly mentioned that I am not in my Sullia address, and I am undergoing medical treatment in my native place near Vittal. Afterwards I have not received any letters from LDM -RO or HO to my given native place address.*

It is only after seeing your notice in Udayavani Newspaper 12.03.2006 I came to know that your 3 notices sent to my Sullia address returned unpaid and surely I felt very much shocked to see your above notice in the Newspaper dated 12.03.2006 and I reacted and responded to your above notice immediately through telegram and letters sent to you and RO Hubli on 10.04.2006 that is before your given stipulated period i.e. 12.04.2006….

At the end of the letter he has shown his leave address as *B. Sadashiva Adyanthaya, Barebettu House, Post Barebettu, Kolnadu Village, Bantwal Taluk, D.K.* Whether the above address is the very same address which he indicated at the first para of his letter is not clear. He had only referred "In my Native place near Vittal" which fall short of a postal address. If really he had addressed such letter in response to the letter of LDM, Haveri dated 18.12.2004 and issued telegram message dated 10.04.2006 there should have been some documentary proof which is not placed on record.

11. It is clear from sub clause III of clause 33 that, when the notice under the said clause is sent to the employee by registered post acknowledgement due at the last recorded address communicated in writing by the employee and acknowledged by the Bank, the same shall be deemed as good and proper service. Since, there is no proof available from the evidence placed by the 1st Party that he had intimated his changed address to the 2nd Party prior to 12.12.2005 (on which date first show cause notice was sent through RPAD) 03.02.2006 (the date on which second show cause notice was sent) and 12.03.2006 (on which date the third show cause notice was published in the Newspaper), it is inevitalbe to invoke the deeming clause contemplated by sub clause (III) of 33 of the Settlement and thus the procedure contemplated by sub clause (I) and (II) of clause 33 is proper in the matter of issue of notice is properly complied.

12. Once it is held that there was proper service of notice on the workman, then comes the question of justification of the order removing his name from the muster roll. The 3 judgments relied by the 1st Party are not of any avail to him. The first cited judgment of the Apex Court in the matter of *Regional Manager Central Bank of India* vs Vijay Krishna Neema (Supra) it was an appeal against the order of the Learned Single Judge of the Hon'ble High Court. The Hon'ble High Court had directed the employer to take him on duty and liberty was given to the employer to conduct Departmental Enquiry if they so choose to. The validity of notice issued to the workman as per clause 16 of Sastry Award which was not served on the employee was the subject matter of the appeal. The Hon'ble High Court noticed that the Bank had not sent the notice to his address and had not tried to serve the notice personally to the employee he had 236 days of leave in his credit. He had an explanation to put forth before the Management with regard to his ailment which is supported by medical certificate. He had submitted an application to the Bank for change of his address. On the above grounds the Hon'ble High Court had allowed the Writ Petition. The Apex Court though noticed that the Hon'ble High Court committed serious error in holding that personal service of notice was imperative in as much as in case of absent employee notice was required to be served by registered post with acknowledgment due, it was also further noticed that

there was no proof of sending the notice under registered cover, and the Bank had not denied shifting of residence by the employee. In fact, the Bank had filed a suit for recovery of loan against the employee subsequently suggesting that it had the notice of his changed address. Without disturbing the concurrent finding of fact with regard to non-service of notice and since there was liberty to the Bank to give an opportunity to the employee, the appeal was dismissed.

The circumstances of the case on hand have no semblance to any of the questions addressed in the said case. There is no proof from the side of the 1st Party that he had informed his change of address prior to issue of notice by the Bank by invoking clause 33 of the Bipartite Settlement.

13. In the second cited judgment of *Indian Bank vs S. Maheswari* (Supra) it was found by the Hon'ble High Court that, because of her indisposition employee was not able to join duty after sanction period of leave and was not able to communicate her illness to the Bank, she had shifted her residence for the purpose of continuous treatment. The concerned Industrial Tribunal had held that the notices were rightly sent to her last known address as furnished by the employee to the Bank and the final order passed by the Bank effecting voluntary retirement was valid under law. However, taking a lenient view and considering her young age took mercy on her and directed the Bank to reinstate her without continuity of service and Back wages. The employee had produced a Certificate of posting in order to prove that she had sent the letter informing change of her address to the Bank. Both the Tribunal and the Hon'ble High Court did not believe her version that she had informed about her change of address through the said letter. However, for the reason that, the satisfaction on the part of the Bank was not recorded before declaring that the employee is deemed to have retired from service and the notice also did not contain the grounds upon which the Bank had reasons to believe that respondent had no intention to join duty, the Hon'ble High Court further held that, "….such reasons for belief may be by an enquiry held by the Bank or from out of the other documents such as communications from the employee…" So, it is clear for us that the mode of service of notice was not the issue either before the Industrial Tribunal or before the Hon'ble High Court. Of course the 2nd Party/Bank in the final order while arriving at the decision to remove the employee's name from the muster roll has not expressly recorded its satisfaction about the intention of the employee to discontinue his service. But there is ample evidence supported by the cross-examination evidence of the 1st Party about his reluctance to work outside Dakshina Kannada District which will be discussed in the later paras.

14. The third cited judgment of *Shiw Kumar Ram vs Union Of India* (Supra), notice was issued under clause 33 of 8th Bipartite Settlement of 2005, the Hon'ble High Court though appreciated the mode of service of notice by way of registered post (which were returned undelivered with the endorsement either he refused to accept the notice or the noticee was unavailable), having further noticed that during the relevant period employee was suffering from mental illness and was under treatment, but had excellent confidential report which persuaded the Hon'ble High Court to set aside the order of the Bank. Though it was held that order of voluntary retirement was properly passed in accordance with the rules, negatived the order of the Bank that it was not proper on the part of the Bank to maintain the decision to treat the employee as retired was irreversible. Without disturbing the order of voluntary retirement, the Hon'ble High Court directed the Bank to reconsider the case of the employee by giving him an opportunity to file an application and by hearing him and pass a reasoned order. It was indicated in the order that if the reason was properly explained there is no bar in recalling or setting aside the decision to treat the employee as retired. The above judgment does not in any way destabilise the deeming clause of (III) of clause 33, when the notice is not delivered on the employee in his address.

15. The contention of the 1st Party that there is no proper service of notice, lacks merit because they were issued in the last known address furnished by him. There is no evidence to infer that he had informed the Bank about change of his address.

Having reached the stage that there was proper service of notice on him, now the question would arise whether there was sufficient material before the 2nd Party to believe that the 1st Party had no intention to join for duty at the Branch/Bank.

16. It is an admitted fact between the parties, which surfaced during the cross examination of the 1st Party that, he was the senior most employee who was liable to be transferred to any of the Branch in Hubli Region, except North Karnataka District for 3 years. On completion of 2 years of service in transferred place he could have asked for retransfer, when his term for transfer came; His option was called for. He requested to retain him in the same place (i.e. Aranthodu Branch of D.K District) on medical grounds for his aliments of Hypertension, Diabetics, Mellitus and Atrial Septal Defect etc. He had submitted Medical Certificate in support of his request, but the Bank subjected him to Medical Examination by their Visiting Doctor O.R. Srirangappa, the Doctor gave a report to the effect that the aliment he was suffering was not an impediment for his transfer. Thereafter he was transferred and relieved from Aranthodu Branch to Regional Office, Hubli with a direction to report at Lead Bank, Haveri. Though he reported at transferred placed on 30.05.2003, he remained absent from 22.07.2003 to 25.10.2003 again he absented from 04.12.2003 to 10.12.2003, from 15.12.2003 to 20.01.2004 and from 03.02.2004 to 09.02.2004. His application for leave though was not sanctioned he remained absent from 15.03.2004 to 03.08.2004. The 2nd Party vide letter dated 03.08.2004 had instructed him to report to duty within 3 days from the date of receipt of the letter but he did not report, instead he wrote back with a medical certificate expressing his inability to report. Again he was subjected to medical examination by

Doctor O.R. Srirangappa; subsequent to the report of the said doctor he reported to duty and worked till 29.11.2004. Though he had written a letter to the Bank undertaking to report to duty from 25.07.2004 he did not keep up his word. Admittedly after the notice by way of RPAD returned unserved, it was issued by way of paper publication dated 12.03.2006 calling upon him to report to duty within 30 days and submit explanation for his unauthorised absence; failure to report to duty within the stipulated period will be treated that he has voluntarily retried from the service of the Bank and his name will be struck off from the muster roll of the Bank. It is not as if the 1st Party did not read the said paper publication; he addressed an undated letter undertaking to report to duty on or before 22.04.2006 without fail with necessary medical certificates. In the said letter he had indicated that stipulated notice period expires on 12.04.2006, still he requested the 2nd Party to give him opportunity considering his 29 years of dedicated service, the said letter is marked as Ex M-7 and same is received in the Bank on 15.04.2006; he wrote another undated letter which is received on 24.04.2006 again seeking extension of time to join the Bank up to 29.04.2006. In his letter he refers to a telegram dated 10.04.2006 for which he has not produced any documentary proof. He has produced the medical certificate of a Private Practioner/ his treating Doctor stating that, he is suffering from High Blood Pressure, High Blood Sugar and he is extremely weak and requires rest atleast for 10 days. When the past history of the workman is amply clear that he was reluctant for transfer outside Dakshina Kannada District and persistently and intermittently remained absent without valid reason and further did not report to duty in response to the call notice within the stipulated period, this Tribunal cannot find fault with the order of the 2nd Party dated 03.05.2006/vide Ex M-9 in infering that *he is no longer interested in his employment and intends to abandon and relinquish his job.*

17. The 1st Party had fair opportunity to persuade this Tribunal by leading evidence bringing out genuine medical grounds for his absence. He had frequently remained absent and could not report to duty to call notice of the 2nd Party within 12.04.2006. His affidavit evidence was the mere reiteration of his claim statement averments, his plea that he is suffering with Hypertension and High Blood Sugar is too vague to be accepted as a hinderance for him to work at Haveri Branch.

18. The procedure contemplated by clause 33(III) of Bipartite Settlement for issue of notice having promptly complied and 1st Party having not reported within the period stipulated in the call notice published in the Newspaper dated 12.03.2006 and having not worked in the 2nd Party from 29.11.2004, no unreasonableness/arbitrariness can be smelt in the action of the 2nd Party, for invoking clause 33 of the Bipartite Settlement and removing his name from the muster roll by treating him as Voluntarily Retired from service of the Bank. The 1st Party is not entitled for any relief in his reference.

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 09th July, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 30 जुलाई, 2019

का. आ. 1402.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारां के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 39/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.07.2019 को प्राप्त हुआ था।

[सं. एल–12011/17/2016–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 30th July, 2019

S.O. 1402.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 30.07.2019.

[No. L-12011/17/2016-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour

Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 39/16

Date of Passing Award- 04th July, 2019

Between:

Shri Vinesh Shah,
Through president,
Bhartiya Labour Union, 3/216,
Dakshin Puri Extn.
New Delhi-110062. … Workman

Versus

The Circle Head,
Punjab National Bank,
Circle Office, South Delhi,
Rajendra Place,
New Delhi. …Management

Appearances:-

Shri S.C. Dubey, (A/R) : For the Workman

Shri Rajat Arora, (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of M/s. Punjab National Bank, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 12011/17/2016 (IR(B-II) dated 19.04.2016 to this tribunal for adjudication to the following effect.

> **"Whether the service of Shri Vinesh Shah S/o Shri Hira Lal Shah have been terminated illegally and/or unjustifiably by the Bank and if so, what relief is he entitled to and what directions are necessary in this respect."**

The contention of the claimant is that he was employed as a safai Karamchari by the management since 1.01.2011 on a monthly wage of 11,863/-. But the management was not paying the agreed amount for which he was often raising objection. On 04.10.2013 by a verbal order the management terminated his service and at the time of termination the procedure laid down u/s 25-F, 25-G and 25-N of the ID Act 1947 was not complied by the management. All the efforts by the workman for his reinstatement failed and on 06.07.2015 he served a demand notice on the management for his reinstatement. He then agitated the matter through the Bharatya Labour Union before the Labour Commissioner wherein a conciliation proceeding was taken up. Since the conciliation failed and a failure report was communicated to the workman he filed the present claim petition. His further contention is that initially he was working as a tea vendor for many years in the Malavaya Nagar Branch of the management Bank. One Keladevi the Safai Karmachari was transferred on 31.12.2010 and in her place the workman had joined the Branch of the Bank as a Safai karamchari. Since he started demanding the legal facilities he is entitled to, the management got annoyed and terminate his service by an oral order. The act of the management amounts to unfair labour practice and he is entitled to the relief prayed for.

Being noticed the management Bank appeared and filed WS refuting the allegation of the workman. The specific plea of the management is that the workman was never their employee and never existed any employer employee relationship between them. He was working as a Tea vendor in the bank for supply of tea to the Bank employees. Later on, he was found selling tea outside the Bank Premises to nearby shop and public. The gas connection facility supplied to him was found misused and when the same was pointed out the claimant stated misbehaving with the bank staff. At times he was working as a part time sweeper on leave gap arrangement for which he was being duly compensated. While denying the liability of the Bank to reinstate the workman to service, it has been pleaded that the proceeding is not maintainable for the representation of the workman through a Union to which he is not a member. All other stand taken by the claimant has been denied by the management.

On this rival pleading the following issues are framed for adjudication.

ISSUES

1. Whether the services of Shri Vinesh Shah claimant/workman have been terminated illegally and/or unjustifiably by the management of P.N.B.? if so its effect?

2. Whether there is employer and employee relationship between the management of Punjab National Bank and claimant/workman Shri Vinesh Shah.? If so its effect?

3. To what relief claimant/workman is entitled to and what directions are necessary to be issued in this respect to management of P.N.B.

The workman examined himself as WW1 and produced a series of documents which have been marked as WW1/1 to WW1/20. These documents include demand notice, several correspondence made by the Branch head of the Bank at Malvaya Nagar to the circle office of PNB requesting appointment of the workman as a PTS, the reply received from the circle office the report of conciliation etc. Similarly the management examined the chief manager of the circle office of the Bank as WW1 and proved three documents as MW1/1 to MW1/4. These documents include the photocopy of the attendance register of the employees of the Branch of the Bank the circular of the bank introducing the scheme for canteen facilities in the Branch and the circular of the Bank introducing alternative mechanism in lieu of interview for recruitment of full time sweeper, part time sweeper in subordinate cadre.

The Ld. A/R for the workman opened his argument saying that initially the workman was a Tea vendor in the Bank. At that time one Kela devi was the part time sweeper of the Bank and she was transferred to a different branch on 31.12.2010. The workman was allowed to discharge the duty of the part time sweeper in the management Bank w.e.f. 01.01.2011. He was being given monthly wage of 11,863/. He had worked for a period of 240 days during the 12 month period as a part time sweeper and when he demanded regularization, pay parity and other service benefits, the management terminated his service orally w.e.f. 04.10.2013 without following the procedure laid down under law which amounts to unfair labour practice.

In reply the Ld. A/R for the management Bank while denying employer employee relationship between the management and the workman argued that at no point of time the workman was employed by the bank and thus the allegation of the termination is a misconception of fact. He also argued that after the transfer of PTS Kela devi no one was appointed in her place and the workman who was infact a tea vendor was occasionally cleaning the bank premises and for the same he was being paid immediately. Thereby the management took a stand that the plea of the workman for reinstatement is illegal.

Be its stated here that during the pendency of the hearing the workman had made a prayer for a direction to the management bank for production of the attendance register of the Bank, the seniority list of PTS and the wage payment register. In reply the management produced the photocopy of the attendance register for the relevant time which doesn't contain any reference about the present workman. It has been explained by the management in the reply that the attendance register, wage payment register and seniority list etc are maintained in respect of regular employee and not the persons working on leave vacancy. It has also been pleaded and argued by the management that after the transfer of Kela Devi no PTS was ever appointed in the Bank and thus, there is no possibility of maintenance of the seniority list. Thus, the management did not produce the documents as called by the workman.

ISSUE NO. 1

This is the most important issue for the adjudication in this proceeding. In order to decide whether the service of the workman was terminated illegally by the management, it is to be decided first of all, if the workman was working as a PTS with the Bank from 01.01.2011 to 04.10.2013 i.e. for a period of 2 years and 10 months. The workman has pleaded and laid evidence that he was working as a PTS and attending the work as a peon after the transfer of Kela Devi to a different Branch. The management took a stand that the workman had never worked in the capacity of the part time sweeper. The admitted facts are that no appointment letter or termination letter was issued to the workman by the management. Thus, from the evidence on the fact it is to be ascertained if at all the workman was working as a PTS in the Bank. The workman as WW1 has fully supported the averments of the claim statement and added that prior to the transfer of Kela Devi he was the tea vendor. From 01.01.2011 he was allowed to work as the PTS of the Bank. No document relating to his appointment has been placed on record. But the workman during his examination as WW1 has stated that one Mr. Tandon was the manager of the Bank and by him he was inducted to work as PTS. He has admitted that no interview was conducted nor any advertisement was issued for filling up the post. Taking advantage of the same the Ld. Counsel for the management argued that the management is a nationalized Bank having its own rules and procedure for appointment of PTS and full time sweeper. One document has been placed on record and marked as MW1/4 issued as a circular by the administration division of the Bank vide notification dated 1.02.2012. As per this circular the remuneration to be paid to the sweepers has been determined in terms of 9th bipartite settlement dated 27.04.2010 depending upon the hour of work and the area to be cleaned by the sweeper. This circular contains other conditions including qualification, age, relaxation of age and physical fitness etc of the candidates.

Mr. Arora the Ld. A/R for the bank submitted that the primary burden is on the workman to show that he was working as a PTS of the Bank and had completed 240 days of work during the period of 12 months to enable him for deriving the benefits as prayed for.

The evidence and pleading of the workman go to show that he was engaged as Sweeper on 01.01.2011 and during his cross examination by the Ld. A/R for the Bank he was asked about the appointment letter to which he denied. However, a suggestion was put to him which was recorded affirmativly to show that he was engaged as a sweeper w.e.f. 01.01.2011.On behalf of the workman a series of the letter correspondence between the branch manager of the Bank Malvya Nagar and the chief manager HRD circle office PNB Delhi has been filed. These letters have been marked in a series of WW1/3 to WW1/17. A careful reading of these letters lead to a conclusion that on 13.10.2011 and 12.12.2011 the Branch manager gave a proposal vide exhibit WW1/3 to the Chief Manger HRD circle office PNB proposing to appoint the workman Shri Vinesh Shah as PTS. The Chief Manager HRD by letter dated 21.12.2011 marked exhibit WW1/4 asked the Branch Manager to provide the seniority list of the PTS working in the Branch. The Branch Manger by letter dated 12.04.2012 (exhibit WW1/6) gave reply that no PTS has been appointed after the transfer of Kela Devi but Shri Vinesh Shah is working to clean the Branch premises and his candidature is recommended for appointment as PTS. No action was taken as a result of which the Chief Manager Malvya Nagar went on writing letters on 31.05.2012 ,16.07.2012 ,04.10.2012, 05.11.2012 and so on proposing appointment of Vinesh Shah as PTS since he is working for cleaning the Branch. This letter correspondence have been marked as WW1/6, WW1/7, WW1/8,WW1/10,WW1/11 WW1/12, WW1/13, WW1/14 and the document marked as C,D,E etc. At last the branch manager by letter dated 06.08.13 marked as WW1/16 wrote a letter to the Chief Manager HRD circle office, giving reference of all the earlier correspondence and requested that the workman be appointed as the PTS. Another document has been filed by the workman marked as WW1/17. This is the letter dated 18.09.2013 by the Chief Manager HRD circle office PNB addressed to the Branch Manager Malvya Nagar New Delhi. In this letter instruction was imparted to the Branch manager that the case of regularization of temporary PTS was to be put under status-quo till further instruction. However, regarding engagement of temporary PTS on account of creation of vacancy the guidelines of the Head office in circular No. 72 dated 11.02.2012 is to be followed. That circular has been filed by the management and marked as MW1/4.

But surprisingly the branch manager Malvya Nagar instead of following the instruction laid in office circular no. 72 dated 11.02.2012 and ignoring the direction for maintenance of status-quo orally terminated the engagement of the workman w.e.f. 04.10.2013. The documents which are the correspondence between the Branch manager and chief manager HRD filed by the workman have not been disputed by the management at any point of time. Rather the management witness as MW1 during cross examination stated that he is aware of the letter correspondence between the Branch Manager and the Chief Manager HRD. He also admitted during cross examination that as per record different persons namely Vinesh Shah, Bachhan Jha, etc., had worked after the transfer of Kela Devi as Part Time person for cleaning and sweeping.

Though the workman filed a petition for production of the attendance register, wage register, etc., the management witness stated that no such records are maintained for persons engaged casually. This stand of the management is not believable since the bank a financial organization while making payment is supposed to maintain record of the detailed payment being accountable for the purpose of audit etc. It is thus difficult to believe that the management Bank has not maintained any register of attendance and wage when admitted that the workman was working in the Bank for cleaning and getting remuneration for the same. The irresistible conclusion thus, is that the bank made suppression of material documents which could have thrown light on the point under controversy.

The Hon'ble Supreme court way back in the year 1968 in the case of Gopal Krishna Ji Kedkar vs. Mohhamad Haji Latif and others reported in AIR 1968 SCC 1413 came to hold that the burden of proving a fact lies with the party which possesses the best evidence. A similar view was taken by the Hon'ble Division Bench of the Supreme Court in the case of Bal Kishan vs. Presiding Officer reported in 1996(3)SCT 548. Recently the Hon'ble High Court of Punjab and Haryana in the case of Ramesh Kumar vs. P.O. IT Panipat reported in 2018 LLR 1229 have held that when documents were called but not produced the management is guilty of withholding the documents which could have thrown light on the dispute.

The factual position of this proceeding is that the material available on record lead to a conclusion that the management through its managers had made several correspondence with the circle office for appointment of the workman as a PTS and in each correspondence it was mentioned that he is working in the branch as the sweeper. There is another document available in record wherein the Chief Manager HRD has ask the Branch manager to provide the seniority list of PTS alongwith the application of the workman date of Birth, qualification, and days of work done etc. this document has been marked as WW1/4. The Branch Manager gave reply on 22.02.2012 in a letter marked as WW1/5 indicating clearly that Shri Vinesh Shah had worked for 298 days from 01.02.2011 to 31.01.2012 that is during 12 months. All other detail information asked by the HRD Manager was furnished under this letter WW1/5.

As indicated above the witness examined on the behalf of the management has not denied the authenticity of these documents. Rather stated that he is aware of the correspondences in this regard between the Branch Manager and

the HRD Manager. Thereby the management witness admitted that the workman was working in the Branch during the relevant period and correspondences for this appointment was made by the then managers with the circle office. Nothing is required to be proved by the workman if the only witness examined by the management admits the claim of the workman in toto. Moreover, in this case the management has not produced the relevant records which could have thrown light on the claim of the workman. Thus, in view of the facts proved and the principle decided in the case of Gopal Krishan Ji Kedkar and Bal Kishan referred supra it is held that the workman had worked for the management for more than 240 days during a period of 12 months and the bank intentionally withheld the documents to that effect and instead of giving him regular appointment the bank illegally terminated his service and at the time of termination the different provision of the ID Act were not followed.

ISSUE NO. 2

A separate issue has been framed to determine the employer employee relationship between the workman and the management. The Ld. A/R for the management strenuously argued that the evidence never establishes the employer employee relationship between the parties. It is true that no express oral or documentary evidence is available on record to decide and determine this issue. In such situation other factors are required to be taken into consideration. In this case there is no denial that the claimant was working as a sweeper in the bank. There is also no denial that he was being paid for the work done by him and the evidence also reveals that the Bank manager was exercising the control and supervision over his work. In the case of BHEL vs. Mahinder Prasad Jakhmola and Others reported in 2019 LLR 515 the Hon'ble Supreme Court have held that when there is evidence about payment of wage by the management, even if there is no appointment letter, no PF, no wage slip etc., the workman would be held as the employee of the person who pays the salary maintains control and supervision of his work. In this case at no point of time management has taken the stand that the workman was not being paid remuneration by the bank. Rather the management witness has explained that he being a casual worker no records for the remuneration paid is maintained. Thus, from this evidence it is concluded that the claimant/workman had a direct employee and employer relationship with the management bank as the and his service was terminated illegally. This issue is answered in favour of the workman.

ISSUE No. 3

The Ld. Counsel for the management argued that there is a clear circular of the Bank suggesting alternative mechanism in lieu of interview for recruitment of full time sweeper and part time sweeper etc., The circular has been filed and marked as MW1/2. As per the circular the selection of full time and part time sweeper will be made on the basis of age and qualification index after receipt of the application from eligible candidates and the circle have to take appropriate action for notification of the vacancy, short listing of candidates etc. But to the view of this tribunal this circular has no applicability to the grievance of the claimant/workman since this circular came into force on 4th July 2016 i.e. two and half years after the termination of the workman.

The evidence on record as adduced by both the parties clearly establishes that the workman had worked as a sweeper from 01.01.2011 to 04.10.2013 on a monthly remuneration of 11,863/- and his service was illegally terminated when the circle office had directed to maintain status-quo on the matter of regularization of the service of the PTS. The action of the management in terminating the service of the workman ignoring the period of work rendered by him amounts to unfair labour practice and the management is also guilty of suppressing material document which could have clarified the points of dispute. This issue is accordingly answered in favour of the workman and it is held that he is entitled to the relief sought for. Hence, ordered

ORDER

The claim be and the same is accordingly answered in favour of the workman. The management is directed to reinstate of the workman in to service as a PTS of Bank with 50% back wages, continuity of service and all other service benefits as he would be entitled to. The management is further directed to implement the order within 2 months from the date when the award would become enforceable, failing which the back wages accrued shall carry interest @ 6% per annum from the date of notification of the award till final payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 1 अगस्त, 2019

का. आ. 1403.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन रेलवे कैट्रिंग एंड टूरिज्म कॉर्पोरेशन लि. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकता के पंचाट (संदर्भ संख्या 38/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2019 प्राप्त हुआ था।

[सं. एल–41012/08/2015–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 1st August, 2019

S.O. 1403.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2015*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Kolkata as shown in the Annexure, in the industrial dispute between the management of Indian Railway Catering and Tourism Corporation Ltd. and their workmen, received by the Central Government on 01.08.2019.

[No. L-41012/08/2015–IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 38 of 2015

Parties: Employers in relation to the management of Indian Railway Catering and Tourism Corporation Ltd. (IRCTC)

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : None

Dated: 18th July, 2019 Industry: Railways.

AWARD

By Order No.L-41012/082015-IR(B-I) dated 22.06.2015 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

"(1) Whether the action of the management of M/s. Swastika Enterprise and M/s. Shomuk Engineering & Consultancy Services, contractors of IRCTC is justified by terminating the service of contractual workmen without following statutory rules and regulations?

(2) Whether the workman is entitled to receive (i) Terminal Benefits under Section 25F(b), (ii) One month notice under Section 25F(a), (iii) Bonus and (iv) Leave with wages is justified or not? If not, what relief the workmen are entitled for?"

3. When the case was taken up for hearing today, none appeared for the parties concerned. It transpires from record that though this reference is pending in this Tribunal since 30th June, 2015 and inspite of all the opportunities, neither the union has ever appeared and filed its statement of claim, nor the managements have filed its written statement to proceed further with the case. It further appears that notice issued to IRCTC was returned by the postal authority with the endorsement "left" and accordingly union was directed to furnish the present address of IRCTC, but the union failed to furnish such address. It also appears that the union refused to receive last notice sent to it by this Tribunal.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of the issue as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

5. Therefore, the reference is disposed of accordingly.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 18th July, 2019

नई दिल्ली, 1 अगस्त, 2019

का. आ. 1404.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बंगिया ग्रामीण विकास बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकता के पंचाट (संदर्भ संख्या 06/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2019 प्राप्त हुआ था।

[सं. एल–12011/36/2007–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 1st August, 2019

S.O. 1404.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2008*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Kolkata as shown in the Annexure, in the industrial dispute between the management of Bangiya Gramin Vikash Bank and their workmen, received by the Central Government on 01.08.2019.

[No. L-12011/36/2007–IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 06 of 2008

Parties: Employers in relation to the management of Bangiya Gramin Vikash Bank

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. Md. N. Islam, Chief Manager of the bank

On behalf of the Workmen : Mr. D. Paul, General Secretary of the union

Dated: 24th July, 2019 Industry: Banking

AWARD

By Order No.L-12011/36/2007-IR(B-I) dated 22.02.2008 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

> *"Whether the action of the management of Murshidabad Gramin Bank (now named as Bangiya Gramin Vikash Bank) in determining the seniority and promotion of the award staff including messengers, is justified? If not, what relief the concerned workmen are entitled.''*

2. After receipt of above reference by this Tribunal, notices were sent to the parties whereupon the union representing the concerned workmen filed statement of claim on behalf of the workmen stating therein that seniority of the employees and officers of the bank is governed by Section 13(1), (2) and (3) of Murshidabad Gramin Bank Staff Service Regulation, 1985, but the seniority list was prepared by the bank vide circular No. MGB/ADM/1698 dated 21.10.1998 for all cadres in violation of section 13(3) of common Service Regulations for officers and employees. It was published separately for officers maintaining Section 13(3) vide circular No. MGB/ADM/21/98-99 dated 10.12.1998 rectifying the bank's earlier circular issued on 12.10.1998 before promotion process of officers, but no rectification was made for clerks maintaining Section 13(3) of Service Regulation before initiating promotion process of clerks. The management of the bank published several seniority list on different occasions placing employees/officers in different position. The National Industrial Tribunal passed an Award dated 30th April, 1990 and Government of India circulated it accepting the Award on 22nd February, 1991. The fitment formula was given in the circular in respect of part time employees. The Chairman of Regional Rural Banks was to consider such case on merit and decide whether such employees performed part time or full time work in the bank and fix their fitment accordingly. In the process of re-fixation if a senior employee is fitted at a lower stage than the junior employee, the senior should be provided with protection by stepping up his fitment. It was also to ensure that no senior employee draws less than his junior employee. On the basis of above Government order dated 22nd February, 1991 the Chairman of the bank had given fitment to messengers as they had performed full time work in the bank since their joining. The fixation was also given on the basis

of seniority. The seniority list of messengers was not published before promotion process on the basis of seniority as per NIT Award. The bank has also not considered the direction of Government of India circular dated 11th June, 2002 relating to reservation of SC and ST in promotion process. Promotion was given on pick and choose method violating the directives of the Government of India.

3. In reply of union's statement of claim the bank filed its written statement stating that promotion of award staff including messenger was effected by the management of erstwhile Murshidabad Gramin Bank as per provisions of Appointment and Promotion Rules, 1998. The seniority list of officers and clerks was published by the management on 21st October, 1998 and after rectification on 10th December, 1998. The concerned employees also participated in the promotion process accepting all its components and having been unsuccessful at the examination had challenged a component of the promotion which amounts to approbation and reprobation at the same time. The objection was raised by the Murshidabad Gramin Bank Staff Association only on 18th November, 2005 for the first time. The seniority list of employees was published by the management through circular dated 21.10.1098 wherein all employees were advised to point out errors and omissions, if any for further rectification. Rectified list was also published on 12th October, 1998 after incorporating inadvertent errors and omissions. Fitment of all categories of staff including the part time employees were done as per guidelines issued by the Government of India, but no employee was reported to have raised any objection to the said fitment. The bank has complied with the direction of the Government of India in respect of reservation of SC/ST in promotion. Shri Subhas Saha belonging to SC category got promotion from clerk to officer under reserved category. Meanwhile five Regional Rural Banks in West Bengal sponsored by United Bank of India were amalgamated on 21st February, 2007 and Bangiya Gramin Vikash Bank was constituted. The Bangiya Gramin Vikash Bank already published interse seniority list of all categories of employees as per provisions of Bangiya Gramin Vikash Bank (Officers & Employees) Service Regulations, 2007.

4. The union filed its rejoinder repeating the averments already made in the statement of claim.

5. On behalf of the union Shri Bablu Das, Shri Budhadeb Bhattacherjee and Shri Asit Roy have been examined as witnesses. None has been examined on behalf of the bank.

6. I have heard the authorized representative of the union as well as the bank.

7. Basic questions which have come up for consideration before this Tribunal are whether the seniority list dated 21st October, 1998 and rectified list dated 10th December, 1998 were published by the bank in violation of Rule 13(3) of Murshidabad Gramin Bank Staff Service Regulations 1985 and secondly whether promotion process was conducted in violation of rules?

8. There is no dispute with regard to the date of publication of seniority list as well as of rectified seniority list. The management has specifically mentioned in its written statement that after publication of rectified seniority list no objection was ever raised by the association. It was only after passage of 7 years that Murshidabad Gramin Bank Staff Association raised objection against seniority list on 18.11.2005. The union has not controverted this averment of the management of the bank. In rejoinder filed by the union also the union has not stated that before 2005 any objection had been raised against the seniority list by the union.

9. In **Rabindra Nath Bose & Others** v. **Union of India & Others**, AIR 1970 SC 470 the Hon'ble Apex Court has considered the finality of seniority list where objections were not raised against the seniority list for a long time whereby other party acquires a right therefrom. The observation made by the Hon'ble Court may be quoted as below:

> *"We are not anxious to throw out petitions on this ground, but we must administer justice in accordance with law and principle of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after a laps of number of years."*

10. Further in **T.C Sreedharan Pillai & Others** v. **State of Kerala and Others**, 1973 KLT 151 a Full Bench of the Hon'ble High Court of Kerala relying upon above dictum considered finality to be attached in respect of settled seniority and held as below:

> *"47. The petitioners were duly qualified for inclusion in the 1962 list and they had been granted promotion to the Upper Division in the list of 1962. By virtue of that promotion they had acquired a right to have their ranks and seniority in that category reckoned on the basis of principles laid down in Rule 27(a) of the Kerala State and Subordinate Rules. The position of the officers in relation to the promotions of 1961 and 1962 had become settled at least by the orders exhibit P-1 and P-2 passed in February, 1965. No statutory appeals or revision petitions are shown to have been filed against thos orders and hence it must be taken that those lists had become final. It is not in the interest of the maintenance of moral efficiency and contentment in th service to disrupt after a long lapse of time matters pertaining to vital service conditions like seniority and rank which had already become settled."*

11. Thus the principle which is derived from the above pronouncements is that a review of seniority and promotions after a lapse of many years affecting rights of the parties regarding their ranks and seniority will be neither just nor equitable.

12. A Division Bench of the Hon'ble Kerala High Court in **Karthikeyn and Another** v. **State of Kerala & Others**, ILR 2002 (2) Kerala 31 considered similar question wherein the petitioners wanted to place persons who did not complete their probation within the maximum period of four years below them and to give further promotion to the post of Assistant Conservator of Forests recasting seniority list. The seniority list was published in the year 1984. In 1988 another seniority list of Rangers was published against which a representation was filed in the year 1991 to review the seniority list. Ultimately final seniority list was published by maintaining the seniority list of 1984 intact. When the dispute reached before the Hon'ble Kerala High Court, the Hon'ble Court held that seniority list had become final. The petitioners had never challenged the said seniority list at any point of time, but only in proceeding before the Hon'ble Court. The Hon'ble Court relied on the principles laid down by the Hon'ble Apex Court in Rabindra Nath Bose case (supra).

13. In the instant case, seniority list was published way back in October, 1998 and thereafter rectified seniority list was also published in December, 1998, but from 1998 to 2005, i.e., for 7 years no objection was raised by the Association. Thus as principles laid down by the Hon'ble Supreme Court and the Hon'ble High Court in above case laws, the association cannot be permitted to unsettle the seniority list. The seniority of a person once recognized cannot be brushed aside at the fancy of the association. Apart from this, the union has not mentioned the details of period of probation and the workmen who were on probation and whose probation period had been extended so as to bring their case within Rule 13(3) of the Regulation of 1985. A mere wild allegation is of no use to unsettle a long standing seniority after a lapse of 7 years. Hence the issue raised by the union in this regard has no merit.

14. It has been also contended that the management of the bank has given promotion on pick and choose method violating seniority and direction of the Government regarding reservation of SC and ST. From the record it appears that a joint discussion had taken place between the management of Bangiya Gramin Vikash Bank and Bangiya Gramin Vikash Bank Employees' Union on 14th September, 2007 under reconciliation at Assistant Labour Commissioner's Office after merger of Regional Rural Banks including Murshidabad Gramin Bank into Bangiya Gramin Vikash Bank. The proceedings of joint discussion was reduced in writing and is filed on record as Annexure – A of rejoinder by the union from which it appears that written test had been conducted by the bank in which 27 candidates participated. Out of which 12 candidates were called for interview in accordance with the Promotion Rules of 1998. Position of seven candidates was undisputed but remaining five candidates are alleged to have been called for interview keeping aside arbitrarily eight others who were senior to above five candidates whereas they were eligible to be called for interview instead of above five candidates. Two candidates were promoted as they had passed in the interview. Be that as it may, but the bank appears to have conducted written test and interview for promotion. The Recruitment and Promotion rules show that 50% of the post shall be filled up by direct recruitment through Banking Service Recruitment Board and 50% by promotion in case of Scale-1 officer and 90% by direct recruitment and 10% by promotion for Clerk-cum-Cashier and Clerk-cum-Typist. Second Schedule of the Rules filed as Ext. W-07 shows that promotion shall be made on the basis of seniority cum merit. But where the bank has promoted the employees on the basis of written test and interview, the criteria of seniority cum merit cannot be said to have been followed. In the matter of **Samsul Haqaue Others** v. **Bangiya Gramin Vikash Bank & Others** this question came up for consideration before the Hon'ble High Court of Calcutta who has held that where the bank had selected candidates and granted promotion on the basis of test, the promotion would be actually on the basis of merit cum seniority and not on seniority cum merit. Promotion on the basis of seniority cum merit is naturally different from that on the basis of merit cum seniority. The distinction between the two criteria has been explained by the Hon'ble Apex Court in **Bhagwandas Tiwari & Ors**. v. **Dewas Sajapur Kshetriya Gramin Bank & Ors.**, AIR 2007 SC 994 in which the Hon'ble Apex Court has explained that the principle of merit cum seniority lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal. On the other hand the criteria of seniority cum merit lays greater emphasis on seniority. The employee cannot claim promotion as a matter of right by virtue of his seniority alone and a junior employee may be promoted.

15. In Samsul Haque case (supra) the bank had granted promotion in violation of the promotion policy based on seniority cum merit. It was found that the authorities of the bank while selecting candidates for promotion considered the marks secured by the individual candidates in the interview and performance appraisal report apart from the written test and thus it was observed by the Hon'ble Court that the bank, in fact, followed the procedure of granting promotion on the basis of merit cum seniority. The marks secured in the interview as well as performance appraisal report and written test cannot have any effect in the matter of granting promotion on the basis of seniority cum merit.

16. In the present case, it is obvious that promotion had been granted by the bank on the basis of written test and interview which is violative of Rules of 1998 prescribing promotion on the basis of seniority cum merit. Hence, promotion granted by the bank to the staff under reference including messengers is not sustainable and cannot be

justified. However, maintaining seniority list of 1998 and that after merger of Murshidabad Gramin Bank into Bangiya Gramin Vikash Bank, the award staff including messengers are entitled for their promotion on the basis of seniority cum merit.

17. Award is passed accordingly.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 24th July, 2019

नई दिल्ली, 1 अगस्त, 2019

का. आ. 1405.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रेल पहिया कारखाना प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बैंगलोर के पंचाट (संदर्भ संख्या (152/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2019 प्राप्त हुआ था।

[सं. एल–41012/116/2007–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 1st August, 2019

S.O. 1405.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 152/2007*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* Bangalore as shown in the Annexure, in the industrial dispute between the management of Rail Wheel Factory and their workmen, received by the Central Government on 01.08.2019.

[No. L-41012/116/2007–IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 17TH JULY 2019

PRESENT : Justice Smt. Rathnakala, Presiding Officer

CR 152/2007

I Party	**II Party**
Sh. A. Willing Dongston, Gr.II, Mechanical Branch, Rail Wheel Factory, Door No. 67, 10th Main Road, Manjunathanagar, Bangalore – 560010.	The General Manager, (Mechanical Branch) Wheel & Axle Plant, Ministry of Railways, Yelahanka, Bangalore – 560054.

Appearance

Advocate for I Party : Mr. S.T. Sathish Naik

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-41012/116/2007-IR(B-I) dated 30.10.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"How far the management is justified in terminating the services of Sri. A. Willing Dongston for alleged unauthorized absence on medical grounds and to what relief is Sri. Willing Dongston is entitled for under the circumstances?"

1. The claim of the 1st Party is, he joined the services of the 2nd Party as Skilled Artisan on 17.08.1984, and was further promoted as Technician Grade-II in the Mechanical Branch. He fell sick and underwent treatment for his back ache, when he approached the 2nd Party with Medical Certificates seeking permission to join duty, they refused to grant permission. The charge sheet dated 30.03.1998 is said to have been issued on the allegation of unauthorised absence, but said charge sheet and enquiry notice were not served on him. While he was undergoing treatment his whereabouts was very much known to the 2nd Party Management. He underwent Medical Treatment in a Private Hospital since he had no confidence in the Railway Hospital. The Disciplinary Authority passed the punishment order on 24.04.1999 dismissing him from service. He preferred an appeal before the Appellate Authority but till date there is no response to his appeal memo. He raised the Industrial Dispute on 14.08.2003 before the Regional Labour Commissioner, Bangalore. The 2nd Party filed its counter on 26.11.2003; the Conciliating Authority exhibited the delay tactics in not referring the matter for Industrial Adjudication; he had approached the Hon'ble High Court for a direction to the Conciliation Officer to conclude the Conciliation proceedings at an early date. Despite the Court direction the matter was not referred, he had issued 3 legal notices seeking to refer the matter for Industrial Adjudication. After prolonged correspondence finally the dispute was referred to this Tribunal on 30.10.2007.

2. As per the counter statement of the 2nd Party the 1st Party workman remained unauthorizedly absent w.e.f 22.10.1997, vide letter dated 12.12.1997an attempt was made to advise the workman to report to nearest Railway Hospital in case of his sickness. The letter sent to his last known address returned with the remarks 'House locked'. No information was received from him regarding the alleged sickness. In view of the serious misconduct of the 1st Party workman Disciplinary Proceedings was initiated under the Railway Servants (Discipline and Appeal) Rules, 1968; charge sheet dated 30.03.1998 was issued, same was sent to his last known address and also his permanent address; they returned un-served with the remarks 'House locked'. The charge sheet was also displayed on the notice board at the work spot of the 1st Party workman. The enquiry hearing dates were fixed to be held on 30.05.1998, 10.07.1998, 26.10.1998 vide enquiry notice of 21.05.1998, 25.06.1998, 12.10.1998 and respective notice was sent to his last known address and also his permanent address they returned un-served with the remarks 'House locked'. The enquiry was conducted on 26.10.1998; the copy of proceedings was sent to the last known address and also his permanent address which returned un-served with the remarks 'House locked'. After giving sufficient opportunity to the 1st Party, the enquiry had to be conducted Ex-parte after following the due process. The Disciplinary Authority imposed penalty of removal from service vide order dated 24.04.1999 and the 1st Party was advised of the same vide penalty advise dated 24.04.1999 and the same returned un-delivered. They have not received any appeal against the penalty imposed on him. He took about 4 years to approach the Conciliatory Authority. When it was submitted to the Conciliatory Authority that he has not submitted any appeal against the penalty imposed on him; the Conciliatory Authority advised him to submit an appeal to the Appellate Authority, till date he has not submitted any appeal. Instead he approached the Hon'ble High Court in W.P. No. 32990/2004. The Hon'ble High Court directed that the Conciliatory Proceedings be concluded at an early date; he had not submitted Medical Reports or an appeal against the penalty he has not sent any record for having sent the document to the 2nd Party Management. He has not exhausted the remedies available to him under The Railway Servants (Discipline and Appeal) Rules, 1968 for redressal of appeals.

3. On completion of the pleadings, the fairness of the Domestic Enquiry was tried and adjudicated by holding "The Domestic Enquiry conducted against the 1st Party by the 2nd Party is fair and proper."

4. Thereafter 1st Party gave his evidence on victimization and his unemployment. The 2nd Party adduced rebuttal evidence denying his allegation of victimization.

5. The enquiry was initiated on the allegation that the 1st Party workman during October 1997 to March 1998 remained absent unauthorisedly continuously from 21.10.1997 without obtaining prior permission/sanction of leave from his Controlling Officer; the above act of unauthorized absence amounts to highly irregular and serious misconduct and is in violation of Rule 3(i) (ii) and (iii) of Railway Service Conduct Rules 1966 which enjoin that every Railway Servant shall at all time (ii) maintain devotion to duty and (iii) do nothing which is unbecoming of a Railway Servant.

6. During the enquiry on behalf of the prosecution it was deposed that the CSE is absent from duties from 21.10.1997 a report to that extent submitted was produced and his attendance particulars for the relevant period August 1997 to March 1998 evincing his absence is SL/LAP/AB.

7. Enquiry Officer recorded his finding *that the employee remained absent from 21.10.1997 onwards without prior permission/sanction of the leave. Hence, the charges of unauthorized absence levelled against Sh. A. Willing Dongsten, Staff No. 072223 vide major penalty charge sheet No. WAP/DAR/AWD/470 dated 27/30 March 1998 are proved beyond doubt*.

8. In his written arguments it is contended that, the 1st Party served the 2nd Party continuously for 15 years, there was no element of moral turpitude in the allegations made against him, no pecuniary loss is caused by his absence to the Management. It was unjust for the 2nd Party to advise him to take treatment at Railway Hospital. He had preferred an appeal dated 20.07.1999 challenging the dismissal order but the appeal was not disposed, the punishment order is harsh and excessive for the alleged trivial misconduct. From the date of his dismissal he is not gainfully employed. In an identical case the Administrative Tribunal granted the relief of reinstatement to one of the employee of the 2nd Party.

9. In its punishment order dated 24.04.1999 the Disciplinary Authority has referred to the facts that, though the charge sheet was served on him, he had not submitted his defence; the Enquiry Officer has given him several opportunities and had advised to attend the enquiry through registered post acknowledgment due; since he did not turn up to the enquiry, the Enquiry Officer conducted the enquiry Ex-parte. The Disciplinary Authority on further examination of the oral and documentary evidence recorded its satisfaction that, the workman was provided reasonable opportunity to defend his case and the charges are proved. While observing that the absence of the employee on the shop floor hampers smooth functioning of the shop and affects the production, and gives rooms for indiscipline among other staffs, the punishment of Removal from Railway Service was passed on 24.04.1999 in the same order the Appellant forum to challenge the penalty was also indicated.

10. There is no evidence from the records about any Appeal being filed challenging the order of removal from service. Once the Domestic Enquiry is held fair and proper, the Tribunal cannot receive any further evidence from the aggrieved workman. The Enquiry Report since based on undisputed allegation of unauthorised absence and no genuine reasons having been showed for the unauthorised absence there is no impropriety on the part of the Enquiry Officer in holding that the charges are proved. This Tribunal vested with the powers bestowed by section 11-A of the Industrial Dispute Act, acts in a different sphere from that of a Administrative Tribunal which is governed by The Administrative Tribunal Act 1985, in pursuance of Article 323A of the Constitution of India. It is also noteworthy that the 2nd Party in the punishment order did not cite any past records of the workman. He had worked continuously for 15 years; at the least he is entitled for terminal benefits towards his past service to the 2nd Party. In that view of the matter following:

AWARD

The reference is accepted. while maintaining the termination order dated 24.04.1999 passed by the 2nd Party against the 1st Party workman, the 2nd Party is directed to release the terminal benefits to the 1st Party workman towards his past service to the 2nd Party within 2 months from the date of publication of the Award in the Official Gazette.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 17th July, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 1 अगस्त, 2019

का.आ. 1406.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फूड कारपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण –सह–श्रम न्यायालय एर्नाकुलम के पंचाट (संदर्भ संख्या 10/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.07.2019 को प्राप्त हुआ था।

[सं. एल–22011/10/2016-आईआर (सीएम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 1st August, 2019

S.O. 1406.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Ernakulam as shown in the Annexure, in the industrial dispute between the management of M/s. Food Corporation of India and their workmen, received by the Central Government on 31.07.2019.

[No. L-22011/10/2016-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL –CUM- LABOUR COURT, ERNAKULUM

Present: Shri V .Vijaya Kumar, B. Sc, LLM, Presiding Officer
(Monday the 22nd day of July 2019, 31st Asadha 1941)

ID No.10 of 2017

Workman : 1. The General Secretary
FCI Workers' Federation (CITU)
C/o FCI Mavelikkara Depot
Alappuzha, Kerala

2. The General Secretary
FCI Workers' Association (INTUC)
C/o FCI Mavelikkara Depot
Alappuzha, Kerala

Management : 1. The General Manager
Food Corporation of India
Regional Office, Kesavadasapuram
Trivandrum - 695004

2. The Area Manager
Food Corporation of India
Area Office
Alappuzha(Kerala) - 688012

3. The Depot Manager
Food Corporation of India
Mavelikkara Depot
Alappuzha(Kerala)

By Adv. Manju Rajan

This case coming up for final hearing on 21.06.2019 and this Tribunal-cum-Labour Court on 22.07.2019 passed the following.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No.L-22011/10/2016-IR(CM-II) dt.08.03.2017 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

"Whether the action of management of M/s.Food Corporation of India in implementing the wage revision of the ancillary workers of Mavelikkara Depot, w.e.f. 01/04/2014 only I.E. Rs.377/- as notified by the public works department, Government of Kerala Bearing no.Go(Ms) No.68/2012/PWD dated 28/09/2012, instead of 01/10/2012 is fair and justified ? If not, what relief the ancillary workers are entitled to ?"

3. After receipt of the reference it was numbered as ID 10/2017 of this Tribunal and notice was issued to the unions and the managements. Union no.2, General Secretary, FCI workers association (INTUC) remained absent after receipt of summons and hence remained exparte. The matter was being posted for filing claim petition by union no.1 from 19.05.2017. From 12.12.2018 eight adjournments were given to union no.1 to file the claim statement. On many of these postings the union no.1 remained absent. On 14.06.2019 the Counsel for the union submitted that the union no.1 is not pursuing the ID. However no memo was filed to that effect by the union. Hence the matter was adjourned to 21.06.2019 for filing memo. The Counsel representing the union no.1 informed that the union is not interested in pursuing the ID but they are yet to provide the memo to that effect.

4. The matter was being posted for the claim statement of union no.1 and the union no.1 was given direction to file the claim with no further time orders. They failed to submit the claim statement even after two years. It is felt that the unions are not interested in pursuing the reference.

5. Since the unions did not file any claim, the management did not come forward to file any objection.

6. Hence the claim is dismissed for non-prosecution.

Hence an award is passed holding that there is no merit in the claim of the unions and the same is dismissed.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Assistant, transcribed and typed by him, corrected and passed by me on this the 22nd day of July 2019.

V. VIJAYA KUMAR, Presiding Officer

नई दिल्ली, 1 अगस्त, 2019

का.आ. 1407.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फूड कारपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण –सह–श्रम न्यायालय नंबर 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 47/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.07.2019 को प्राप्त हुआ था।

[सं. एल–22011/67/2009-आईआर (सीएम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 1st August, 2019

S.O. 1407.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2009) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of M/s. Food Corporation of India and their workmen, received by the Central Government on 31.07.2019.

[No. L-22011/67/2009-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 47/2009
Registered on:-30.03.2010

Sh. Harnek Singh, S/o Sh. Baktawar Singh, Vill. Ransih Kalan,
Tehsil Nihal Singh Wala, Distt. Moga, Punjab. …Workman

Versus

1. The General Manager, Food Corporation of India, Punjab Region, Sector 31, Chandigarh.

2. The Area Manager, Food Corporation of India, District Office, Faridkot. …Management

AWARD

Passed on:-12.07.2019

Central Government vide Notification No. L-22011/67/2009-IR(CM-II) Dated 17.03.2010, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of FCI in terminating the services of the Shri Harnek Singh w.e.f. 03.02.2001 is legal and justified? To what relief is workman concerned entitled?"

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he had joined the management on 07.12.1995 as an Ancillary Labourer along with 8 other persons and his name was referred by the FCI workers-union to the Three Member Committee(hereinafter to be referred as "TMC") along with 8 other persons. Subsequently, management started the direct payment system from 01.01.1999 and while introducing the above system, all the labourers who were working under the system of TMC were observed as permanent labourers to the management in the direct payment system. The TMC vide its letter dated 29.06.1999 wrote to the management-headquarter that claimant along with other 8 workers had not been made the payment of salary since December 1999 along with complete bio-data of the workman along with other workers with their affidavits for the reference and perusal of the concerned officers of the management. The copy of letter dated 29.06.1999 is Annexure A-1. The management vide its letter dated 17.08.1999(Annexure A-2) sanctioned to release the arrears of the payment to the workers. Somehow CBI came to know that the members of the TMC FSD of Food Corporation of India, Nihalsingwala, District Moga while working as such during the year 1999 abused their official position and submitted false affidavits and recommended the appointment of 9 Ancillary Labourers, who were otherwise ineligible for appointment and also drew an amount of Rs.7,53,923/- as the arrears of salary in the name of workman and other labourers and thus, caused a wrongful loss to the management. Accordingly an FIR was registered by the CBI on 9.1.2001 under relevant Sections of IPC and Section 13(1)d read with 13(2) of the Prevention of Corruption Act, 1988 against Dashan Singh, Jagroop Singh and Malkiat Singh, who were tried and convicted by the Special Judge, CBI Patiala, Punjab. Management came to know of the above said FIR registered by the CBI, defendant no.2 without issuing the show cause notice, not affording opportunity of personal hearing, terminated the services of the workman along with 7 other workers vide impugned order dated 2.2.2001(Annexure A-3) while Charanjit Singh and Megh Raj had been regularized by the defendant. Copy of bio-data form of the Charanjit Singh has attached as Annexure A-4. Ultimately, workman along with one Iqbal Singh filed Civil Suit on 18.08.2001, challenging the said impugned order, which was decreed and subsequently, appeal preferred by the management against the said order is allowed by the learned Civil Judge, Faridkot. Copy of the judgment is attached as Annexure A-5 and A-6 respectively. The appeal preferred by the workman against the order of the learned Additional District Judge, Faridkot, had been rejected by the Hon'ble Punjab & Haryana High Court with the liberty that workman may seek remedy before the appropriate forum in accordance with law. It is further stated that the order of termination is against the principle of natural justice without issuing any notice and affording personal hearing to the workman. As per the attendance register, it is clear that the workman has completed 240 days in every preceding calendar year from December 1995 to December 2000 hence, the provision of Section 25-F and 25-G is also applicable in the case an employee Naib Singh joined the management on 1.1.1999 and on the induction of the said person intimated his date of birth wrongly but later on his date of birth was corrected by the management as such, he is also entitled for the parity and liable to be reinstated. It is therefore, prayed that the impugned order of termination dated 2.2.2001 is liable to be quashed and workman is liable to be reinstated retrospectively from 2.2.2001 along with all consequential benefits.

2. Management has filed its written statement, alleging therein that the facts alleged in the claim petition are wrong and workman along with other labourers were never absorbed by the management. It is further stated that such labourers were never engaged by the management in any category whatsoever and they were engaged by the contractor under licence from the Labour Commissioner. Such contractors use to supply the labourer to the management as and when required as the nature of work of the management was not of regular nature and no regular labourers were required by the management. Such workers were engaged by the management and their services were dispensed with as and when desired by the contractors. It is denied that the claimant had been continuously working with the management upto 2.2.2001 or till any date whatsoever. The question of payment of wages etc. pertains to the contractors only as such, when claimant was never an employee of the management, the question of his termination, issuing of notice or salary of one month in lieu of notice as required by the provisions of the ID Act has no force. Claimant was never absorbed as a permanent employee of the management so question of his termination by the management does not arise. Claimant has not worked for 240 days in any calendar year from December 1995 to February 2001 as he was never employed by the management. It is therefore, prayed that claim petition may please be disposed of in the interest of justice.

3. Both the parties have been given opportunity to file evidence. Workman Harnek Singh has submitted his affidavit as Ex.P1 along with documents Ex.A1 to Ex.A7 and cross-examined by management-counsel. The claimant Harnek Singh during the course of cross-examination has denied that he worked under the supervision and control of the contractor. He has admitted that letter of appointment was not issued to him by the management and identity card was issued by the FCI. He has accepted that his boi-data is Ex.R1, which was given during the course of CBI enquiry. This witness has denied the suggestion made by the learned counsel of the management that he has given wrong information through Ex.R1 during the course of CBI enquiry.

4. Management has submitted affidavit of Rajiv Kumar, Area Manager as Ex.RX along with documents Ex.R1 to R3 and cross-examined by the workman-counsel. During the course of cross-examination, this witness has accepted that he is working as Area Manager since 26.09.2015 with the FCI. This witness has accepted that workman was inducted as ancillary labour on 07.12.1995. He further accepted that the service of the workman was terminated on account of the giving false information. This witness has also admitted that management has neither issued any notice to the workman

nor any enquiry was conducted before terminating the services of the workman. He has accepted that he do not know whether Charanjit Singh is in service or not.

5. I have heard the argument of the learned counsel of the workman Sh. Rahul Dev Singh, and counsel of the management Sh. Santokh Singh, and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

6. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workwoman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh (2005) 8, Supreme Court Cases 481*** as well as ***Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.***

7. Question remains to be seen whether the workman have proved that he was directly engaged under the respondent-management in the year 1995 and regularly continued in service till his termination. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single document to prove that he was directly employed by the respondent-management. In this connection, neither in plaint nor in the evidence of the workman Harnek Singh filed through affidavit Ex.P1 has not been alleged that he was appointed by the management in writing through any appointment letter. Undoubtedly, claimant-witness Harnek Singh has categorically stated in his evidence that he was employed by the management itself not by the contractor. Contrary to this, management in its written statement as well as affidavit of Rajiv Kumar, Area Manager as Ex.RX as witness has averred that workman/claimant had never been appointed by the management otherwise he may have employed by the contractors.

8. The Hon'ble The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer are:-

1) Whether the principal employer pays the salary instead of contractor and

2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been stated in the claim petition of the workman. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workman namely Harnek Singh has not mentioned anything regarding the mode of payment of wages, salaries etc. in his affidavit. Thus, this basic feature for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workman. In this connection, learned counsel of the workman has contended that payment of salary was subject to the control and supervision of the management and virtually it was paid by the management. In this connection, learned counsel has drawn my attention towards sanction letter dated 17.08.1999 of management Ex.A-2 filed by the workman which reveals that payment of arrears of 9 workers including workman was released from 1993 upto July 1999 on the basis of the recommendation sent by three members committee. In sanction letter Ex.A-2 payment of 9 workers(name not mentioned)had been sanctioned from the year 1993 upto July 1999 on the basis of the recommendation sent by TMC. The position ancillary labourers and payments made by the management shall be discussed in later part of the judgment and it is suffice to say that I am not satisfied with the argument of the learned counsel of the workman as nothing is mentioned in the claim petition as well as affidavit filed by the workman in evidence, alleging therein that he was engaged by the management since 1993. It is also pertinent to mention that nothing is on record in the form of documentary evidence that workman was directly employed by the management since 1993. It is surprising that workman as a witness has not stated in his affidavit as well as claim petition about the amount of salary or wages payable to him by the management. Thus, on this issue, firstly it can be incurred that there is nothing on record to prove the factum of payment of salary by the management.

9. Secondly, so far as, the question of controls and supervision is concerned. Workman has not stated that his work was supervised and controlled by the management. Nothing is brought on record to prove that it is management who was supervising and controlling the work of claimant. The apex court in the case of ***International Airport Authority of India Vs. International Air Cargo Workers Union [209 (13) SCC374]*** has held as follows:-

> *"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.*
>
> *The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be*

assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

10. Thus, the principal enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the workman is mum on this score and as a witness, he has not mentioned any specific averment in his affidavit regarding the letter of appointment, authority of dismissal or taking of disciplinary action by the management. There is nothing on record to prove that it is the management who grants his leave or authority to take any disciplinary action. Workman has not stated in his claim petition nor in his oral evidence about the nature of work, supervision by any officer of the management and mode of payment etc. Thus, evidence regarding the control and supervision by the management is also lacking on the part of the workman to prove the relationship of employer and employee.

11. The comprehensive analysis of documentary evidence reveals that workman Harnek Singh name is referred by the Three Members Committee to the management for payment of salary from December 1999 onwards when direct payment system was introduced by the management through TMC from 1.1.1999 as per averment of claimant which is supported by his affidavit filed as evidence. Unfortunately, either of the parties have not averred in their pleadings regarding the formation of Three Members Committee. But copy of judgment filed by the management relating to the Criminal Case C.C. No.2 of 17.01.2003 decided on 25.08.2006 against the member of TMC on basis of charge sheet filed by CBI reveals that this committee is formed through memo of understanding between FCI-management and FCI workers union wherein it was agreed that FCI would resolve direct payment system through Three Members Committee(TMC)nominated by the workers union from among Ancillary Labours and further to disburse the same to the Ancillary Labours. Thus, this was system to exclude the contractors high handedness in payments of labours employed by them for the work of FCI. This Criminal judgment is relevant to the extent that claimant name is referred by the members of committee for induction as Ancillary Labour and payment of salary since 1993 on false documents who were prosecuted and convicted by CBI Court for misappropriation and withdrawals of money to the tune of Rs.7,53,223/- from FCI Exchequer. Thus, it is clear from the pleadings of the workman and evidence on record that before December 1999 he was not inducted as Ancillary Labour by the management of FCI and he was working under the contractors.

12. Learned counsel of management has drawn my attention towards the fact that workman has taken different stand regarding his joining as labour either as contract labour or as Ancillary Labour. In claim petition, he has taken specific stand that he had joined the management from 07.12.1995 while he has submitted an affidavit copy of which filed by the management as Ex.R1 stating that he was working at FCI FSD, Nihal Singwala Depot as ancillary labour both under contract system and subsequently under TMC since 1.1.1993. This fact is falsified by his own document relating to his bio-data Ex.R2 filed by the management witness namely Rajiv Area Manager. Claimant/workman has mentioned in Ex.R2 his date of birth 15.05.1977, and joining of primary school in year 1983, High School in the year 1988, Government Secondary School in 1993 and ITI Moga in the year 1997 and passing in 1998. Thus, it is very much clear that he was taking education from 1983 upto 1998 as such working as labour under contract system or direct payment system since 1993 vindicate the stand taken by the workman regarding joining management in the year 1993 to December 1995 as is alleged in claim petition. It is settled position of law that if the origin and basis of claim is falsified then entire structure is bound to collapse.

13. Learned counsel of the workman would argue that letter dated 29.06.1999 Ex.1 sent by the TMC to management and letter of termination dated 2.2.2001 is sufficient proof that workman was inducted as ancillary labour in the management and he was paid wages from 1993 upto December 2000 vide letter dated 17.09.2009 Ex.A2 releasing the arrears of payment to the workman along with other workers. Critical analysis of above documents do not support the argument advanced by the learned counsel of the workman. Firstly, letter Ex.A1 is not a letter sent by TMC to management for inducting workman as Ancillary Worker as much as it is written by Assistant Manager(stg) to Assistant Manager(Depot) Food Corporation of India for verification of contents of each labour, sent by the Vice President of FCI workers union, New Delhi. Similarly, sanction letter dated 17.08.1999 Ex.A2 reveals that payment of arrears of 9 workers was released from the year 1993upto July 1999 on the basis of recommendation sent by TMC which is not only prosecuted but also convicted by CBI Court for withdrawal of amount against those labours who were not in existence at relevant time.

14. It is claim of the workman that he was not paid salary from December 1999 upto the termination of his services by the management vide its letter Ex.A3 dated 2.2.2001. Learned counsel of workman has contended that letter regarding the dispensing of services of workman is proof that he was rendering his services with management from the year 1999

upto 2.2.2001. Learned counsel of management argued that he was not paid single peni from FCI exchequer for relevant time because he was neither inducted as Ancillary Labour by the management nor his services was taken as such by the management. In fact there is no documentary evidence on record to prove that recommendation of TMC is accepted by the FCI-management and salary was released in favour of workman and other 8 workers from December 1991 upto 2.2.2001. It is neither natural or reasonable that workman was serving with management as Ancillary Labour from December 1999 upto 2.2.2001 without any payment of salary by management. Claimant could not dare to summon any record regarding his attendance register to prove these facts alleged in claim petition.

15. In the last limb of the arguments, learned counsel of the claimant/workman has contended that in fact workman has joined in the month of July 1999 and date is wrongly mentioned of joining on 07.12.1995. It is further contended that since joining in the month of July 1999, workman has continuously worked with the management till his retrenchment 2.2.2001. Thus, he has completed more than 240 days in preceding year before his termination from the service of the management without giving any notice or in lieu of notice one month salary as is prescribed under Section 25-F of the Industrial Disputes Act, 1947. Undoubtedly, the provision of Section 25-F of the Industrial Disputes Act, 1947 is mandatory in nature as is settled by the Hon'ble High Court as well as Supreme Court in catena of cases but the question which arises before the Tribunal for consideration is whether workman has served with the management and before his has completed more than 240 days in preceding year from the date of alleged termination. It has been observed by the Tribunal that workman has poorly failed to prove neither the date of joining from the year 1995 nor there is any evidence on record in the form of attendance, payments etc. to prove that he worked with the management even from July 1999 to the date of termination i.e. 2.2.2001. Document Ex.A3 filed by the workman dated 2.2.2001 reveals that District Manager, Food Corporation of India, Faridkot, has sent a letter to the Assistant Manager(D), FCI, FSD, Nihal Singh Wala, for information that by an order by Regional Office, Punjab, Chandigarh, vide his letter dated 29.01.2001, the services of the claimant/workman along with two others are being disposed with immediately because of the false information and affidavits filed by the workman and others. This document does not reveal anything regarding 240 days of working of workman with the management before the alleged termination by the management. It appears that letter send by TMC for induction of the workman along with other workers and relevant documents and affidavits found to be false and in pursuance of that, the services of the workman as well as 2 workers were dispensed with. Claimant/workman has alleged in his affidavit for serving 240 days before his termination but mere oral evidence is not sufficient to prove that he has in fact rendered his services upto 240 days in preceding year of his termination as is required under Section 25-F of the Industrial Disputes Act, 1947. Thus, on the basis of the evidence on record, workman has failed to prove that he had worked with the management 240 days or more on preceding year before his termination as such, neither notice before termination nor one month salary is required to be given to the workman as per provision of Section 25-F of the Act.

16. So far as the argument regarding the parity of the workman with Charanjit Singh(ancillary labour)is concerned. Ex.A4 filed by the claimant/workman reveals that Charanjit Singh had mentioned his age 15.07.1978 and submitted affidavit with the averment that he was working since 1.1.1993 in his affidavit. According to the learned counsel of the workman, he has been retained by the management after changing his date of birth and workman is also entitled for his regularization with the management on the basis of the parity with Charanjit Singh. There is no documentary evidence to the effect that Charanjit Singh is working with the management. Even if it is presumed that Charanjit Singh is working with the management even then this Tribunal has got no right to justify the misdeed done by the workman for submitting false affidavit regarding his engagement with the management in the year 1993 or in the year 1995. It is settled principle of law that a person cannot take benefit of his own misdeed. Here is a case, in which workman has not only played fraud with the management in connivance with the T.M.C. but also filed this claim, mentioning his engagement with the management since 07.12.1995 which is not proved by the evidence. This Tribunal is of the considered opinion that he is not entitled reinstatement on the basis of the parity with Charanjit Singh without proving that he was ever directly employed by the management.

17. Having gone through the above factual scenario and legal proposition, this Tribunal is of the considered opinion that claimant is not entitled for any relief sought for and reference is liable to be answered in negative against the workman.

18. Let copy of the award be sent to the Central Government for publication as required under Section 17 of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 1 अगस्त, 2019

का.आ. 1408.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीबीएमबी के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह श्रम न्यायालय नंबर 2., चंडीगढ़ के पंचाट (संदर्भ संख्या 47/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.07.2019 को प्राप्त हुआ था।

[सं. एल–23012/2/2015–आईआर (सीएम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 1st August, 2019

S.O. 1408.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2015)of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of BBMB and their workmen, received by the Central Government on 23.07.2019.

[No. L-23012/2/2015-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 47/2015

Registered on:-16.10.2015

Sh. Dharam Pal, F/Man(Retired), H.No.59, Kailash Nagar Ward-18,
Gali No.4, Kurukshetra, Haryana-136118. …Workman

Versus

The Executive Engineer(O&M), BBMB, Kurukshetra-136118, Haryana. …Management

AWARD

Passed on:-02.07.2019

Central Government vide Notification No. L-23012/2/2015-IR(CM-II) Dated 30.09.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of BBMB in terminating the services of the workman Shri Dharampal and not paying dues are legal and justified? If not, what relief the workman is entitled to and from which date?"**

1. Both the parties were served with notices. The workman/claimant filed his statement of claim with the averment that he had joined the services of the BBMB on 01.01.1978 on the post of Oil Cleaner in the office of sub-Station Engineer 220 KV sub-Station, BBMB, Kurukshetra under Executive Engineer on the O&M Division, BBMB, Kurukshetra. Due to outstanding service record and very good ACRs as well as technical proficiency, he was promoted up to the rank of Foreman. He retired from the service of BBMB on 31.07.2012 after attaining the age of superannuation i.e. 58 years and subsequently appointed on contract for six months basis and extension was allowed as per details given as under:-

a. 11.09.2012 to 10.03.2013 (for six months)
b. 11.03.2013 to 10.09.2013 (for six months)
c. 26.09.2013 to 25.04.2014 (for six months)
d. 01.05.2014 to 09.07.2014 (for six months)

2. Claimant submitted an application for extension on 09.07.2014 before the Chief Engineer Transmission, BBMB vide his office letter No.188/PD-3201/APD-4 dated 06.06.2014 but no extension was granted till the date whereas the Additional Superintending Engineer O&M Division, BBMB, Kurukshetra vide his memo No.929/PF-322 dated 12.12.2014 has admitted in sub para III of para No.7 that the application of Sh. Dharam Pal, Foreman(Retired)for employment on contractual basis as per new policy is not rejected, which is under consideration.

3. Management did not pay the salary in spite of the repeated request and demand for the period 1.7.2014 to 9.7.2014 amounting to Rs.5,316/- and overtime for the period January 2013 to December 2013 amounting to Rs.14,200/- . It is further alleged that Sh. Tej Singh, Special Foreman and Sh. Iqbal Singh, Lineman both are retiree have been retained on contractual basis but the claimant was deprived from this benefit in spite of the assurance by the management time and again. The claimant has been cheated by Sh. N.K. Goyal, the then Superintending Engineer granting the contractual extension in service and taking Rs.20,000/- every time for each extension. Thus, he has taken Rs.80,000/- for granting four time extension as is mentioned above. It is prayed that amount of Rs.80,000/- taken by Sh. N.K. Goyal be liquidated and further extension in service on contractual basis may be granted.

4. Respondent-management has filed its written statement alleging therein that facts alleged in Para 1, 2 and 3 in the claim petition is admitted being matter of record. It is further alleged that workman was reappointed on contract basis as Foreman after his retirement as per the terms and conditions of the contract order as per prevailing policy instructions Annexure R-1. Management has denied the pending dues regarding the period 1.7.2014 to 9.7.2014 and amount of Rs.25,272/- (out of Rs.2,603/- was deducted as Income Tax) and rest amount of Rs.22,669/- is paid to the workman vide cheque no.580007 dated 28.07.2014 as per instructions issued by the management from time to time. The salary was calculated as Rs.22,190/- as per circular instructions vide office order 188/PD-3201.APD-4 dated 6.6.2014 instead of Rs.25,272/-. The said payment has been duly received by the workman. A copy of the salary bill is appended as Annexure R-3. The payment of overtime for period 6.1.2013 to 8.7.2014 amounting Rs.21,816/- has been paid to the claimant vide cheque No.479361 dated 3.8.2015 as per terms and conditions and rates of pay as mentioned in para no.2 of contract of re-employment order dated 10955-58 dated 10.09.2012. The payment of same has been received by the workman. A copy of the receipt of bank information and docket voucher showing detail of payment in this regard are appended as Annexure R-4 to R-6. It is also submitted that as per para no.14 of circular instructions dated 6.6.2014 Annexure R-1, the contractual re-employment shall be given as per work exigencies and not in a routine manner. As such the department is not bound to re-employ the workman and there is no vested right of the workman to get contractual re-employment with management after his retirement. It is further submitted that the allegations leveled by the workman has no legs to stand as it is without any basis and proof. It is also submitted that management has not received any complaint from the workman in this regard as such, the claim petition filed by the workman is liable to be dismissed.

5. The workman has filed its rejoinder, reiterating the same facts alleged in the claim petition as such, it does not required to be repeated again.

6. Both the parties have been given opportunity to file evidence. Workman Dharam Pal has submitted his affidavit as Ex.AW1/A along with documents Ex.A1 to A10 as a part of his statement and cross-examined by management and management has examined Sh. Jai Bhagwan, LDC, who filed his affidavit as Ex.MW1/A and has been cross-examined by the learned counsel of the workman.

7. I have heard Sh. B.R. Bharti, Ld. Counsel for the workman and Smt. Sumanjit Kaur, Ld. Counsel for the management and perused the record carefully.

8. Learned counsel of the workman has contended that management has neither paid the salary from 1.7.2014 to 9.7.2014 amounting to Rs.5,316/- as well as overtime for the period from January 2013 to December 2013 amounting to Rs.14,200/- without specifying any reason for non-payment of the aforesaid amount. He further contended that admittedly, the workman has retired from service on 31.07.2012 after attaining the age of superannuation i.e. 58 years and four time extension were given from 11.09.2012 to 09.07.2014 for a period of six months each as is mentioned in the claim petition but after the scheme of Bhakra Beas Management Board dated 6.6.2014 service of the workman is not extended in spite of the submission of the open application by the workman after 9.7.2014 and repeated request by the workman. It is also contended that services of retired foreman Tej Singh and Lineman Iqbal Singh has been retained on contractual basis but the claimant/workman has been deprived from this benefit in spite of the assurance given by the management.

9. Per contra, learned counsel of the management submitted that workman has paid his salary for the period 1.7.2014 to 9.7.2014 amounting Rs.22,669/- along with salary for the month of June as well as arrears from 6.1.2013 to 8.7.2014 amounting Rs.21,816/- vide cheque no.479361 dated 3.8.2015 through Syndicate Bank, Kurukshetra as such, workman has already paid all the arrears including salary and overtime alleged in the claim petition. It is further contended that admittedly, workman was employed after his superannuation on contractual basis and his services were extended from time to time since 11.9.2012 to 9.7.2014 for six months at a time. It is further contended that after

9.7.2014 workman did not get any extension after the enactment of new policy for contractual employees by the BBMB dated 6.6.2014.It is further contended that being the contractual employee, the management is not bound to re-employ the workman and there is no vested right of the workman to get contractual re-employment with management after his retirement. Thus, according to the learned counsel of the management, workman is not entitled for any relief as prayed in the claim petition and it is liable to be dismissed.

10. So far as the argument regarding the payments of salary from 1.7.2014 to 9.7.2014 amounting to Rs.5,316/- is concerned. Management has filed Annexure R-3 with its written statement which reveals that salary for the month of 6.6.2014 upto 9.7.2014 was calculated vide bill no.532/E amounting to Rs.25,272/- and further deduction of income tax amounting Rs.2,603/- final payment is calculated to Rs.22,669/-. In this connection, learned counsel of the workman contended that in fact the alleged amount is a salary for the month of June only and amount of salary for the month of 1.7.2014 to 9.7.2014 has neither been counted nor paid by the management. There is no dispute that management has paid the salary for the month of June 2014 and it is required by the workman to prove that in calculation-sheet Annexure R-3 the salary of the remaining month has not been calculated by submitting the statement of salary for the month of March, April, May 2014. Learned counsel of the workman has drawn my attention towards Annexure R-2 and contended that answer given by the management through RTI Act, 2005, it is clear that workman has not been given the salary amounting Rs.5,366/- for the period 1.7.2014 to 9.7.2014 because his application for extension in service on contractual basis is pending for consideration. It is pertinent to mention that RTI report Annexure A-2 is related to the date 12.12.2014 in which fact regarding the non-payment of salary from 1.7.2014 to 9.7.2014 has been mentioned. Learned counsel of the management has drawn my attention towards the letter of additional executive engineer Vijay Singh dated 18.08.2015 in which it is specifically mentioned that the workman is paid an amount of Rs.21,816/- regarding the overtime from 6.7.2016 to 8.7.2014 and he has been paid Rs.3,282/- extra for the month of June, 2014 to 9.7.2016 because of the fact that workman is paid surplus salary for the month of June, in due course of old policy salary is calculated to Rs.25,272/- while he was entitled only from 1.6.2014 to 5.6.2014 on the basis of the old policy and from 6.6.2014 to 9.7.2014 from new policy of the management. Thus, workman is paid Rs.3,082/- in excess which is liable to be recovered. Thus, it is crystal clear that workman has been paid for the month of June 2014 salary including the salary from 1.7.2014 to 9.7.2014 as such, nothing remains to be paid to the workman.

11. Second argument advanced by the learned counsel of the workman relates to the overtime from January 2013 to December 2013 amounting Rs.14,200/-. Workman has accepted in his cross-examination that he has received cheque of Rs.21,816/- in the year 2015 for overtime which relates to the year 2013. During the course of cross-examination, workman Dharam Pal has submitted that he was not paid for 6.1.2013 to 9.8.2014. It is pertinent to mention that initial claim was filed for the overtime period running from January 2013 to December 2013 which is admittedly paid to the workman. Replication/rejoinder filed by the workman, the period of overtime falsely alleged from January 2014 to December 2014 while his services are not extended from 9.7.2014. Hence, question of overtime from 10.7.2014 to December 2014 does not arise. Unfortunately workman has filed false affidavit alleging therein that he was not paid the overtime for the month of January 2014 to December 2014 against the facts alleged in the initial claim petition at para 5. Learned counsel of the management argued that in fact amount of Rs.21,816/- is the amount of overtime done by the workman from January 2013 to 8.7.2014 which is paid vide cheque no.47936 dated 3.8.2015. Learned counsel of management further contended that if the facts alleged in para 5 of the claim petition regarding non-payment of salary and overtime is calculated it stands 19516/- only while against this amount management has paid Rs.21816/- as overtime from 6.1.2014 to 8.7.2014 even then workman has filed this claim petition to harass the management and has submitted false affidavit against the facts alleged in the claim petition itself.

12. In the last limb of the argument, learned counsel of the workman has contended that services of workman is not extended even after giving option for adopting the new policy and open letter is filed as Ex.A-2 on the record. This fact is not disputed that workman has given his option for adopting the new policy and for extension of his services but legal question arise whether management is duty bound to extend the services of the workman who has serving earlier on contractual basis after his superannuation. In BBMBs-policy dated 6.6.2014 Annexure R-1, it is specifically mentioned that contractual employments has been given as per exigencies and not in a routine manner. Thus, if management has no exigencies for extension of the service of the workman then this remedy cannot be availed by filing industrial dispute. It is pertinent to mention that workman has already exceeded the age of 62 years by virtue of his date of birth mentioned in the option letter dated 24.06.2014 while policy Annexure R-1, it is specifically mentioned that the term of contractual employees will be extended for the expels of 10 years upto the age of 62 years so in the light of the terms and conditions of the policy, workman is also is not entitled for extension of his contractual service in given circumstances after the attaining the age of 62 years.

13. Having gone through the above factual and legal scenario, this Tribunal is of the considered opinion that claimant is not entitled for any relief sought for and reference is liable to be answered in negative against the workman. Let copy of the award be sent to the Central Government for publication as required under Section 17 of the Act.

A. K. SINGH, Presiding Officer

शुद्धिपत्र

नई दिल्ली, 1 अगस्त, 2019

का.आ. 1409.—केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, नंबर 2, मुंबई द्वारा पारित संदर्भ संख्या–24/2008, दिनांक 09.02.2015 का भारत सरकार द्वारा 06.08.2015 को अधिसूचित किये गए पंचाट को उक्त अधिकरण से प्राप्त संदर्भ संख्या 24/2008 दिनांक 01.02.2019 के शुद्धिपत्र के साथ संलग्न किया जाता है।

पाद टिप्पणी:—मूल अधिसूचना भारत सरकार के साप्ताहिक राजपत्र भाग II - खंड–3 उप–खंड (ii) में अधिसूचना 15.08.2015 संख्यांक का.आ. 1615 दिनांक 06.08.2015 द्वारा प्रकाशित की गई थी ।

[सं. एल–42012/168/2005–आईआर (सीएम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

CORRIGENDUM

New Delhi, the 1st August, 2019

S.O. 1409.—A reference No.24 of 2008 dated 01.02.2019 received from CGIT No. 2 Mumbai correcting the Award passed by the CGIT No. 2 Mumbai on 09.02.2015 in Ref. No. 24 of 2008 which was notified by the Government of India on 06.08.2015, is annexed herewith.

Foot Note: The Principal notification was published in PART- II SECTION- 3, SUB-SECTION (ii) of the Gazette of India on 15.08.2015 vide notification number S.O. 1615 dated the 06.08.2015.

[No. L-42012/168/2005-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE**,** Presiding Officer

REFERENCE NO.CGIT-2/24 of 2008

(Ministry Order No.L-42012/168/2005-IR(CM-II), dt.07/04/2008)

EMPLOYERS IN RELATION TO THE MANAGEMENT OF HINDUSTAN AERONAUTICS LIMITED

The Chief Manager (P & A)
Hindustan Aeronautics Limited
Ojhar Township (PO)
Nasik (MS) 422 207.

AND

THEIR WORKMEN

Nashik Workers Union
CITU Kamgar Bhavan
Khutwad Nagar
Kamathwade
Nashik 422 008.

Mumbai, dated the 1st February, 2019

CORRIGENDUM TO AWARD DATED 09/02/2015

Mr. R.S. Pande, President, Nashik Workers Union has filed an application stating that there is an error in Award dt. 9/2/2015 passed in Ref.CGIT-2/24 of 2008. The names mentioned in the list of workmen enclosed with the Order of Reference received from Ministry were inadvertently not mentioned in the award. In addition to this some of the names

as mentioned in the Annexure are incorrect and require to be corrected. Orders were passed on the said application allowing the same.

2. In the circumstances, the list enclosed with the order of reference is included in the award and the names of the workers mentioned in the award dt. 9/2/2005 is corrected as per Annexure B to the application (Ex-287).

List of Casual Labourers

CPM DEPARTMENT

1.	Shri Nana Chagan Thakare
2.	Shri Ramesh Baburao Khade
3.	Shri Narendra Bhimashankar Kande
4.	Shri Vinod Premjibhai Jagtiya
5.	Shri Shridhar Natthou Nagare
6.	Shri Shantaram Raghunath Tribhuwan
7.	Shri Ashok Ambu Balsane
8.	Shri Ramdas Bhagwant Mogare
9.	Shri Atul Laxman Joshi
10.	Shri Murlidhar Sukdeo Kadam
11.	Shri Uttam Daular Dhage
12.	Shri Devanand Sadashiv Salve
13.	Shri Ullhas Devrambhai Kansara
14.	Shri Gautam Shivram Sonwane
15.	Shri Ashok Sampat Chaudhari
16.	Shri Subhas Tanjaji Gaikwad
17.	Shri Dattraya Murlidhar Kanse
18.	Shri Bhimrao Dagdu Nikam
19.	Shri Jagnnath Zabu Koli
20.	Shri Dhananjay Lilidhar Bhattad
21.	Shri Popat Bhoru Mali
22.	Shri Dilip Eknath Pagare
23.	Shri Jalidhar Bajirao Kshirsagar
24.	Shri Jangle Ambu Waghchaure
25.	Shri Bapu Raghunath Lokhande
26.	Shri Daulat Sayaji Jadhav
27.	Shri Bhausaheb Bhaguji Deshmukh
28.	Shri Rajaram Savliram Somase
29.	Shri Avinash Kisan Sonwane
30.	Shri Sanjay Karbhari Shete
31.	Shri Kailash Narayan Ahire
32.	Shri Sahebrao Laxman Rajole
33.	Shri Sanjay Lahanu Chadhauri
34.	Shri Ratan Nana Shinde
35.	Shri Rajendra Raghunath Pawar
36.	Shri Jitendra Kasturichand Kasliwal
37.	Shri Parashram Khandu Borade
38.	Shri Ravi Bhaskar Shinde
39.	Shri Kailash Lahu Bhadange
40.	Shri Vikram Pundlik Pagar
41.	Shri Nivruti Damu Sonwane

42.	Shri Sham Kisan Jagzap
43.	Shri Sunil Sampat Salunkhe
44.	Shri Ramesh Umaji Pardhe
45.	Shri Tushar Chintaman Pagare
46.	Shri Bhaskar Fakira Mahajan
47.	Shri Ashok Hiraman Salve
48.	Shri Bharat Sukdeo Kamble
49.	Shri Pravin Madhukar Barve
50.	Shri Indarlal Devji Tungar
51.	Shri Jagdish Appaji Gaikwad
52.	Shri Sandeep Rupchand Man
53.	Shri Deepak Sumatilal Kothari
54.	Shri Vinod Vitthal Kansara
55.	Shri Madan Baburao Salve
56.	Shri Rajesh Vishnupant Borse
57.	Shri Dilip Fakira Navgire
58.	Shri Pavan Rikhabchand Kasliwal
59.	Shri Sanjay Bhaidas Pawar
60.	Shri Avinash Babasaheb Gadkari
61.	Shri Shrikrishna Narendra Pawar
62.	Shri Sijay Shivaji Shelar
63.	Shri Rajesh Ramdas Patulkar
64.	Shri Rafik Babu Shaikh
65.	Shri Prakash Bhaskar Nikam
66.	Shri Mahesh Murlidhar Danekar
67.	Shri Nilesh Pundlik Pawar
68.	Shri Gotiram Shivaji Katle
69.	Shri Deepak V. Jadhav
70.	Smt. Reena Chattarji
71.	Smt. Laxmivai Kamalakar Kasar
72.	Shri Madanlal Madhukar Shinde
73.	Smt. Vasanti Ramubhai Chaudhari
74.	Smt. Manorama Trambak Thakare
75.	Smt. Manisha Devdas Ikhankar
76.	Smt. Shaila Sarvottam Dharmadk
77.	Smt. Shailaja Bhaudnath Sonar
78.	Smt. Asha Niurutti Pagare
79.	Smt. Shamla Ramkrushna Dhawale
80.	Smt. Vimal Vasudev Bharmbe
81.	Smt. Shaile Balnath Jadhav
82.	Smt. Suman Suresh Patil
83.	Smt. Vijaya Sasantrao Kumawat
84.	Shri Kishore Manohar Chaudhari
85.	Shri Vilas Niurutti Jadhav
86.	Smt. Sharda Dwarkadas Pathak
87.	Shri Balu Gatlaj Burade
88.	Shri Jairam Laxman Lahange
89.	Shri Ganpat Popat Bendkule

90.	Shri Chandrakant Visram Salve
91.	Shri Laximan Dadulal Bhujwa
92.	Shri Punja Vithoba Dighe
93.	Shri Bhaskar Vajira Dhangale
94.	Shri Shivaji Narayan Pargaonkar
95.	Shri Ramdas Rajaram Deore
96.	Shri Murlidhar Baburao Adhav
97.	Shri Bhaskar Ramkrishna Hiralkar
98.	Shri Arjun Rama Pardhe
99.	Shri Yeshwant Niurutti Dhikale
100.	Shri Manohar Sampat Chaudhari
101.	Shri Sunil Shankar Gangurde

List of Casual Labourers

CPO DEPARTMENT

1.	Shri Prabhakar Ramchandra Katkade
2.	Shri Balusaheb Damodhar Atre
3.	Shri Bhagwat Damodhar Jadhav
4.	Shri Balu Pandurang Jadhav
5.	Shri Jalam Hari Chavan
6.	Shri Balu Tukaram Tidke
7.	Shri Bhaskar Namdeo Ahire
8.	Shri Ramesh Kashinath Musale
9.	Shri Suryabhan Trambak Mokal
10.	Shri Arun Nana Nirbhavane
11.	Shri Nana Onkar Ahire
12.	Shri Shivaji Vishwanath Kothawade
13.	Shri Sopan Kumar Das
14.	Shri Nimba Keshav Nerkar
15.	Shri Ramesh Dagu Kshirsagar
16.	Shri Gajanan Pandurang Zaparde
17.	Shri Chandrakant Hiraman Sangole
18.	Mrs. Sudha Krishnarao Mule
19.	Shri Natthu Tukaram Dhikale
20.	Shri Sanjay Pundlik Ganore
21.	Shri Pandurang Gopal Yeole
22.	Shri K.D. Khelukar
23.	Shri Samadhan Deoram Dhangde
24.	Shri Ravindra Dhaji Patil
25.	Shri Bhima Kachru Bhadake
26.	Shri Namdeo Bhaurao Dhole
27.	Shri Viushnu Baburao Adhav
28.	Shri Balu Baburao Adhav
29.	Shri Mohan S. Shirsath
30.	Shri Ashok Ramrao Belekar
31.	Shri Vilas Sukdeo Gangurde
32.	Shri Ansar Sadik Shaikh

33.	Shri Ahok Madhu Nikaji
34.	Smt. Lilivati Manohar Kor

List of Casual Labourers

TRANSPORT DEPARTMENT : DRIVERS

1.	Shri Anand Sadashiv Chandramore
2.	Shri Datatray Daoram Zomam
3.	Shri Bakerao Bapu Zoman
4.	Shri Manik Raghunah Boraste
5.	Shri Nandkumar Ramdas Goverdhane
6.	Shri Sakhahari Mahadu Sonwane
7.	Shri Roshankhan Magdunkhan Mulla
8.	Shri Maruti Ramchandra Thorat
9.	Shri Chandrakant Trambak Shirsagar
10.	Shri Shashikant Vasantrao Deshpande
11.	Shri Uday Manikrao Tanpure
12.	Shri Tanaji Gorakh Kadam
13.	Shri Vijay Pundlik Pagare
14.	Shri Kashinath Laxman Patil
15.	Shri Ambadas Vitthal Chavan
16.	Shri Yuvraj Bhimrao Mokashi
17.	Shri Tanaji Vithoba Dhikale
18.	Shri Kailash Sampat Gangurde
19.	Shri Vinod Madhavrao Deogire
20.	Shri Harun Hasan Shaikh
21.	Shri Kailash Karbhari Suruse
22.	Shri Harvindersingh Sukdeo Shiddu
23.	Shri Ajitsingh Tejsingh Chavan
24.	Shri Balu Jagannath Dhilake
25.	Shri Padamkar Khanderao Deshmuh
26.	Shri Rajjak Sardar Sayyad
27.	Shri Ravindersingh Harcharan Malhotra
28.	Shri Hemant Shivram Kulkarni
29.	Shri Sharad Dattatray Dhatrak
30.	Shri Dipak Pundik Kumbharde
31.	Shri Nivruti Jairam Shirsath
32.	Shri Sopan Chandu Gaikwad
33.	Shri Dhondurama Bhangare
34.	Shri Rangnath Hari Marade
35.	Shri Antu Bapu Jagtap
36.	Shri Bhagwan Jagnnath More
37.	Shri Ramesh Punja Kamble
38.	Shri Sunil Baburao Ubale

List of Casual Labourers

MEDICAL SERVICES (CMS-130)

1.	Shri Eknath Kachru Shardul
2.	Shri Laxman Sitaram Hire
3.	Shri Sakharam K. Ingle
4.	Shri Jankiram Nilu Fule
5.	Shri Popat Sakharam Sonwane
6.	Shri Navnath Chintaman Jagtap
7.	Shri Chandrabhan Gumaji Solse
8.	Shri Raju Balvant Gangurde
9.	Shri Dinkar Jagnnath Ahire
10.	Shri Suresh Dudhaji Salve
11.	Shri Dattu Shankar Jondhale
12.	Shri Shivaji Bhagwat Ahire
13.	Shri Ashok Nana Sonwane
14.	Shri Chintaman Dharmji Khade
15.	Shri Nana Sampat Shewale
16.	Shri Gopal Kaniyalal Chaudhuri
17.	Shri Madhav Nivruti Shirsath
18.	Shri Prakash Gangadhar Eknath
19.	Shri Dhyansehwar Laxman Bhadane
20.	Shri Suresh Nana Patekar
21.	Shri Anand Bhaskar Bagul
22.	Shri Shivaji Dashrath Kakipure
23.	Shri Gautam Jagnnath Nikam
24.	Shri Shantaram Dagu Gadgil
25.	Shri Kailash K. Khare
26.	Shri Arun Murlidhar Shirsath
27.	Shri Vijay Rajaram Gaikwad
28.	Smt. Kusumbai Mangu Pawar
29.	Smt. Hirabai Popat Khare
30.	Smt. Sugandabai Madhukar Jadhav
31.	Smt. Lahanubai Nana Sonwane
32.	Smt. Ashabai Kanaiyalal Piraswany
33.	Smt. Bhikubai Kacharu Kambale
34.	Smt. Taibai Eknath Gangurde
35.	Smt. P. Kakade
36.	Smt. Jijabai Damodhar Shirsath
37.	Smt. Tarabai Dadu Sonwane
38.	Smt. Sakira Begam Hamidabai
39.	Smt. Minabai Gopal Chadhuri
40.	Smt. Shamabai Konaiyalal Chadhuri
41.	Smt. Sunita R. Paranjape
42.	Smt. Muklabai Raju Gangurde
43.	Smt. Narmadabi Bhiku Gutane
44.	Smt. Kusumbai Ramdas Jadhav
45.	Smt. Ambabai Madhukar Hire

46.	Smt. Vimalbai Kisan Gangurde
47.	Smt. Suman Sudam Dinkar
48.	Smt. Prarnilabai Prabhakar Gangurde
49.	Smt. Maiatibai Bhatkulkar
50.	Smt. Janabai Yadav
51.	Smt. Lilabai Shivram Gangurde
52.	Smt. Vijayabai Hiram Ahire
53.	Shri S.S. Gaikwad
54.	Shri S.A. Gaware
55.	Shri P.R. Patil
56.	Shri K.M. Malik
57.	Shri Shantaram B. Nehare
58.	Shri Iswar P. Dive
59.	Smt. S.D. Burade

List of Casual Labourers

(WORKS & SERVICES DEPARTMENT)/ FW/675

SANITATION WORK IN FACTORY AREA

1.	Shri Ramesh Rajaram Surudkar
2.	Shri Dinanath Atmaram Patil
3.	Shri Ashok Hari Gangurde
4.	Shri Dagu Damu Ahire
5.	Shri Bhaskar Sadasiv Ahire
6.	Shri Bharat Kahiram Nikam
7.	Shri Dattu Supdu Sonwane
8.	Shri Sanjay Karbhari Mhaishdhune
9.	Shri Sukdeo Kisan Divse
10.	Shri Antu Kisan Nikam
11.	Shri Motiram Rambhaji Rokde
12.	Shri Ashok Dashrath Pawar
13.	Shri Dilip Shrawan Nikam
14.	Shri Popat Daguji Nikam
15.	Shri Lahanu Baburao Khare
16.	Shri Avinash Madhukar Nirbhavane
17.	Shri Pandit Laxman Kedare
18.	Shri Baburao Dagdu Gangurde
19.	Shri Ramgir Bavgir Gosavi
20.	Shri Bhagwat Rajaram Sansare
21.	Shri Subhash Vithal Kedare
22.	Shri Subhash Bapurao Karanajakar
23.	Shri Vilas Bhimaji Pagare
24.	Shri Nivruti Kacharu Shardul
25.	Shri Vilas Baburao Jadhav
26.	Shri Balu Waman Jadhav
27.	Shri Balu Bhimrao Ahire
28.	Shri Eknath Tulsiram Gangurde
29.	Shri Nana Pandhil Shinde

30.	Shri Sitaram Kashiram Nikam
31.	Shri Sampat Rakhamaji Nikam
32.	Shri Uttam Tulsiram Gangurde
33.	Shri Gulab Shankar Gangurde
34.	Shri Anand Kalu Sonwane
35.	Shri Dinkar Punjali Tuplondhe
36.	Shri Nathu Balwant Pagare
37.	Shri Sudhakar Shankar Ubale
38.	Shri Kisan Nimbaji Jadhav
39.	Shri Yuvraj Supdu Sardar
40.	Shri Kisan Laxman Hatge
41.	Shri Achutrao Shankar Joshi
42.	Shri Babu Damaji Gawali
43.	Shri Eknath Madhav Ahire
44.	Shri Anna Gangadhar Jadhav
45.	Shri Ramesh Genu Gangurde
46.	Shri Gopichand Bajirao Mahajan
47.	Shri Dilip Ganpat Chaudhari
48.	Shri Ismail Gulab Shaikh
49.	Shri Ramesh Shivaji Sutar
50.	Shri Suresh Shridhar Pawar
51.	Shri Hiramn Mahadu Jondhale
52.	Shri Ramesh Dashrath Sonwane
53.	Shri Ramrao Trambak Argade
54.	Shri Ganesh Honaji Dambale
55.	Shri Motiram Shridhar Pawar
56.	Shri Sanjay Popat Nikale
57.	Shri Mujid Canisaheb Pathan
58.	Shri Sanjay Jibhau Garud
59.	Shri Ashok Waman Balsane
60.	Shri Vishwanath Shankar Zoman
61.	Shri Balu Kashinath Dambale
62.	Shri Shivaji Damu Gotarne
63.	Shri Ashok Dhondiram Kadale
64.	Shri Malhari Namdeo Kadale
65.	Shri Uttam Punja Jadhav
66.	Shri Ramesh Trambak Thorat
67.	Shri Dadaji Mahandu Panpatil
68.	Shri Nandu Nmidash Torne
69.	Shri Irshad Ahmad Shaikh
70.	Shri Madhukar Shankar Dhilake
71.	Shri Sahebrao Tukaram Wavdhane
72.	Shri Balu Devram Ahire
73.	Shri Motiram Jagannath Chavan
74.	Shri Dilip Waman Pagare
75.	Shri Sunil Daneshwar Sasane
76.	Shri Mohan Kacharu Bachate
77.	Shri Tanaji Punklik Kale

78.	Shri Vijay Shankar Gaikwad
79.	Shri Raju Manikrao Naik
80.	Shri Bhausaheb N. Ugade
81.	Shri Ashok Balwant Mahale
82.	Shri Vijaynath Baburao Pote
83.	Shri Balu Punja Nirbhavane
84.	Shri Sunil Jagannath Wagh
85.	Shri Sambhaji Nana Sonwane
86.	Shri Rathilal Jagannath Thade
87.	Shri Bavsaheb P. Kedare
88.	Shri Dilip Chindhu Jondhale
89.	Shri Ashok B. Lokhande
90.	Shri Sanjay Kisan Pillye
91.	Shri Ajay Ellaiya Pedraj
92.	Shri Narayan Baban Bairagi
93.	Shri Balu Gopala Kadam
94.	Shri Chintaman T. Korde

List of Casual Labourers

WORKERS & SERVICES DEPARTMENT (SANITATION WORK IN TOWNSHIP)

1.	Smt. Gothule Rambhabai Bhikaji
2.	Smt. Jadhav Mirabai Jayawant
3.	Smt. Gaikwad Sarubai Rajaram
4.	Shri Sonwane Dada Ramdas
5.	Shri Salve Sunil Eknath
6.	Shri Salve Chandrakant Punja
7.	Shri Gangurde Shivram Jabaji
8.	Shri Pagare Suryabhan Bhimaji
9.	Shri Garud Dadu Shankar
10.	Shri Nikam Jalal Kashinath
11.	Shri Shardul Dinkar Kachru
12.	Shri Hire Ashok Savliram
13.	Shri Mahale Murlidhar Sursingh
14.	Shri Gothule Waman Bhika
15.	Shri Jadhav Waman Barku
16.	Shri Nikam Ramchandra Kisan
17.	Shri Hire Dagu Kisan
18.	Smt. Bhadange Kaushabai Rangnath
19.	Smt. Ahire Parvatabai JAgan
20.	Smt. Sonwane Dwarkabai Totaram
21.	Smt. Pote Anjanbai Fakira
22.	Smt. Nikam Ranjanabai Bharat
23.	Smt. Jadhav Vimalbai Prabhakar
24.	Smt. Nikale Latabai Bhagwan
25.	Smt. Jagtap Sundrabai Ghaman
26.	Smt. Gangurde Sonubai Balwant
27.	Smt. Kedare Shantabai Kabhu

28.	Smt. Jagtap Banubai Banshi
29.	Smt. Ahire Tarabai Bhimrao
30.	Smt. DivseATikabai Kisan
31.	Smt. Kardak Hirabi Popat
32.	Smt. Shardul Lilabai Dinkar
33.	Smt. Jadhav Sakhubai Kashinath
34.	Smt. Jadhav Babanbai Balkrishna
35.	Smt. Kedare Nadarbai Vitthal
36.	Shri Diama Culchand Mashara
37.	Shri Panpatil Vijay Thakaji
38.	Shri Kadpane Nanaji Waman
39.	Shri Jadhav Shashikant Khanderao
40.	Shri Mehar Jivenshingh
41.	Shri Gosavi Satish Dattaray
42.	Smt. Pardeshi Shankutala Prakash

List of Casual Labourers

TOOL CRIB SECTION TP/615

1.	Shri G.M. Pagare
2.	Shri L.B. Watle
3.	Shri A.K.Sable
4.	Shri H.H. Maule
5.	Shri C.G. Tope
6.	Shri R.B. Bagul
7.	Shri R.N. Bhandari
8.	Shri R.D. Bherad
9.	Shri S.K. Fasale
10.	Shri I.J. Chimankar

List of Casual Labourers

MAINTENANCE OF ST PLANT & SUMPWELL IN TOWNSHIP

1.	Shri Sansare Gangadhar Rajaram
2.	Shri Salve Dayaldas Punja
3.	Shri Khaire Nandu Karbhari
4.	Shri Dhongade Sahebrao Punja
5.	Shri Avhad Tulshram Tukaram
6.	Shri Nikumbha Krishna Ramchandra
7.	Shri Somase Shivaji Savliram
8.	Shri Mahire Kedu Tukaram
9.	Shri Aher Sudhakar Fakira
10.	Shri Seriya Ramkishna Timlu
11.	Shri Jadhav Prabhakar Yadav
12.	Shri Chavan Santaram Deulal

List of Casual Labourers

Electrical Department (Township) FNE/665

1.	Shri Sajid D. Shaikh
2.	Dilip Ramdas jadhav
3.	Abid Javed Shaikh
4.	Shekhar Bharat Pawar
5.	Yusuf Hanif Ansari
6.	Shashikant Narayan Bhjalerao
7.	Dnayaneshwar Ramdas Bhadke
8.	Manoj Shivaji Kadam
9.	Vikas Saveliram Pagare
10.	Sunil Ramchandra Jagtap
11.	Bajirao Dagadu Nikam
12.	Baban Mahadeo Gaikwad

Electrical Department (Factory) FNE/665

13.	Shri Dattu Hari Gangurde
14.	Sanjay Dhokale

Works & Services Depatt. ST Plant/ Slumpwell) FWT/675

15.	Shri Mahendra Sambhaji Jadhav
16.	Arun Shamrao Bagul
17.	Deepak Shankar Gulve

Works & Services Department (Zone-A) FWT/675

18.	Shri Bhagwan Dashrath Ahre
19.	Jagdish Gokul Surywanshi
20.	Ashik Bhaskar Gangurde
21.	Ashok Raghunath Lokhande
22.	Vasant Sakharam Jadhav
23.	Shrawan Namdeo Ahire
24.	Rajendra Popat Kardak
25.	Rajendra Vishnu Shankhpal

Works & Services Department (Zone-B) FWT/675

26.	Shri Ravindra Kachru Ahire
27.	Bhagwan Ramchandra Karate
28.	Dinkar Dada Parkhe
29.	Manik Rambhau Lokhande
30.	Ramesh Waman Shinde
31.	Prakash Jivanna Badgare
32.	Ashok Radhu Pandav
33.	Sure Murlidhar Jadhav

34.	Pramod Vasant Naik
35.	Santosh Pandurang Lokhande
36.	Ajay Pandurang Padangale
37.	Laxman Dhondu Mahale
38.	Somnath laxman More

Works & Services Department- FW/675

Maintenance & Operation of Water Supply Valves in Factory Area

39.	Shri Devidas Uttam Shirsath
40.	Ambadas Dashrath Jadhav
41.	Subhash Somaru Yadav

3. The names of the workmen against their serial numbers mentioned in the award dated 9/2/2015 may be read as mentioned in 'correct name' column.

List of Workmen

Stores Department

Sr. no. as per award	Name as per award	Correct name
6	Vangurde Vasant Popat	Ganurde Vasant Popat
8	Survanshi Arun Popat	Syryavanshi Arun Popat
14	Nevkar Bharat Kishore	Nerkar Bharat Kishore
15	Kadam Dhatera Ganpat	Kadam Dattatraya Ganpat
16	Sonwane Bhausaheb Bajunath	Sonawane Bhaushet Bajunath
21	Bhandande Nivrutti Lohu	Bhadange Nivruti Lahanu
22	Nikam Bal Srishna	Nikam Bala Krishna
26	Kale Haricharnara Shankar	Kale Harishchandra Shankar
29	Loknar Bharat Bhaugi	Loknar Bharat Bhauji
34	Kshirasagar Bhaskar Chabu	Kshirsagar Bhaskar Chhabu
35	Dhore Badu Shankar	Dhotre Shankar Balasaheb
36	Lonkar Anil Dhanaji	Lonkar Balasaheb Dhanaji
42	Muradhanar Uttam Waman	Muradnar Uttam Waman
44	Sonwane Arun Kishan	Sonawane Arun Kisan
52	Rumaje Shantaram Ghagu	Rumane Shantaram D.
83	Kongari Vincent Marthin	Kongari Vicent Martin
84	More Pandurang Khanderan	More Pandurang Khanderao
86	Gaikwad Babu Sadgipan	Gaikwad Babu Sabhipan
91	Gagjap Dilip Nivaruti	Jagzap Dilip Niruuti
93	Tamble Dilip Popat	Tambe Dilip Popat
96	Chaure Naran Kashinath	Choure Narayan Kashinath
101	Battase Ashok Shankar	Battise Ashok Shankar
102	Loknar Balu Dhauji	Lokhande Balkrishna Baburao

103	Gumbade Somnath Kashinath	Gumbade Somnath Kisan
106	Rajkar Chandrakant Lala	Raikar Chandrant Lala
122	Gaikwad Chandrakant Gandha	Gaikwad Chandrakant Gedaji
124	Thair Shaikh Abadi	Thair Shaikh Abadin
125	Avhad Santosh	Avad Santosh
126	Wani Shehlala Arun	Wani Snehalata Arun
127	Jain Mahendrakumar Harkchand	Jain Mahendrakumar Harkchand
132	Jagtap Bharat Murlidhar	Jagzap Bharat Murlidhar
134	Gasavi Atmaram Ashruba	Gosavi Atamaram Ashruba
141	Jagtap Kailash Guman	Jagtap Kailas Guman
144	Barve Bandhu Ramchandra	Barve Balu Ramchandra
147	Lokhande Dilip Madhav	Lokhande Dilip Mahadev
148	Salve Sidharth Sadhu	Salave Sidharth Sandhu

Horticulture Department

Sr. No. as per award	Name as per award	Correct name
2	Chindu Dhondiram Bhongade	Ramdas Dhondiram Dhongade
16	Dinkar Monhram Potinde	Dinkar Motiram Potinde
25	Ravsaheb Rangnath Chandore	Ravsaheb Rangnath Chandre
37	Bhima Laxman Bendkule	Bhimrao Laxaman Bendkule
41	Anna Bhikaji Shardul	Ananda Bhikaji Shardul
42	Jagnnath Bhimaji Kore	Jagannath Bhimaji More
48	Ramdas Popat Watate	Ramdas Popat Watane
56	Zunabai Laxman Bhavan	Zunyabai Laxaman Bhavar
68	Sankar Murlidhar Ahre	Shankar Murlidhar Aher
88	Ramji Dhanaji Lonkar	Ramrao Dhanaji Loknar
90	Rakesh Narayan Vidhate	Ramchandra Narayan Vidhate

Date: 01.02.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का. आ. 1410.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बडौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ सं. 60/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08. 2019 को प्राप्त हुआ था।

[सं. एल–12011/53/2014–आईआर (बी– II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 2nd August, 2019

S.O. 1410.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Kolkata as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda, and their workmen, received by the Central Government on 02.08.2019.

[No. L-12011/53/2014-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 60 of 2014

Parties: Employers in relation to the management of Bank of Baroda

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : None

Dated: 23rd July, 2019 Industry: Banking

AWARD

By Order No. L-12011/53/2014-IR(B-II) dated 5/7.08.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

(1)"Whether the action of the management of Bank of Baroda by not considering the demand of Union for regularization of 18 no. of personal drivers as Appexure-1(B) with all consequential benefits as available as per service condition of Bank employees in Banking Industry is legal and/or justified?

(2) Whether the action of the management of Bank of Baroda by not considering the demand of Union for equal wages for equal work done by personal drivers as compared to regular drivers or not extending minimum wages fixed by Central Govt. from time to time to personal drivers is legal and/or justified? What relief the workmen are entitled?"

ANNEXURE – 1(B)

Drivers to Executives

Sl. No.	Name of the Drivers	Car No.	Name of the Executives whose car is driven	Driving since
1.	Anand Das	WB 06A 9454	GM (Now ML Jain)	October, 1996
2.	Md. Akram	WB 06H 1827	DGM (Now SK Singharoy)	October, 2008
3.	Bimal Das	WB 06A 1344	DGM KMR (Now S K Saha)	February, 2010
4.	Subhus Das	WB 06B 9639	DGM, WB (Now LS Jha)	April, 2005
5.	Sujit Dey	WB 06A 8261	AGM, WB (S Ghatak)	November, 2001

6.	Krishna Ram	WB 06A 3222	AGM, KMR (Now PK Roy)	31.12.2009
7.	Raju Biswas	WB 42F 8485	KRISHI VAN (W.B.)	October, 2005
8.	Biswajit Mondal	WB 02AA 7973	AGM, WB (Now N.C. Mal)	August, 2012
9.	Nishok Kr. Singh	WB 02AA 7982	AGM, EZO (Now T K Das)	August, 2012
10.	Ramanand Das		AGM, Brab Rd.	Sept. 2008
11.	Santosh Ram	WB 06AA 7992	AGM, Dharamtalla	Aug. 2012
12.	Rajesh Ram	WB 06D 9878	DGM, ZIC (Now A. Mishra)	January, 2012
13.	Rabi Muniyan	WB 02AA 7993	AGM, RBO (Mr. Amsare)	August, 2012
14.	Gautaim Palit	WB 06E 2194	AGM, Camac St. (Mr. Utpal)	Sept. 2011
15.	Sunil	WB	AGM, India Exch. (Now G.B. Panda)	Sept. 1983
16.	Sujit Nage	WB	AGM, IBB, Wholesale	Sept. 1988
17.	Subrato Pattro	WB 06D 5453	AGM, I. Exch. (Now Mr. Peter)	August, 2010
18.	Birendra Ram	WB 02AA 7983	AGM, Mid-Corp. (Mr. A.S. Ghosh)	August, 2012

3. When the case was taken up for hearing 18.07.2019, none appeared for the parties concerned. It transpires from record that this reference is pending in this Tribunal since 25.08.2014 and both the parties entered appearance through their respective authorized representatives and the union filed its statement of claim and the management also filed its written statement, but inspite of all the opportunities, the union has not filed its rejoinder. Both the parties are found absent since 18.09.2018, i.e., on five consecutive dates.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of 18 personal drivers as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

5. Therefore, the reference is disposed of accordingly.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 23rd July, 2019

नई दिल्ली, 2 अगस्त, 2019

का. आ. 1411.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोरपोरेशन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ सं. 31/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08. 2019 को प्राप्त हुआ था।

[सं. एल—12011/47/2013—आईआर (बी—II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 2nd August, 2019

S.O. 1411.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2013) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Kolkata as shown in the Annexure, in the industrial dispute between the management of Corporation Bank, and their workmen, received by the Central Government on 02.08.2019.

[No. L-12011/47/2013-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 31 of 2013

Parties: Employers in relation to the management of Corporation Bank, Zonal Office

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : None

Dated: 23rd July, 2019 Industry: Banking

AWARD

By Order No. L-12011/47/2013-IR(B-II) dated 10.07.2013 and corrigendum of even number dated 02.07.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Corporation Bank is justified in denying the demand over regularization of service of Shri Pintu Das Part-time Sweeper at Section V, Salt Lake Branch, Kolkata is legal and justified? What relief the workman is entitled?"

3. When the case was taken up for hearing 22.05.2019, none appeared for the parties concerned. It transpires from record that this reference is pending in this Tribunal since 22.07.2013 and both the parties entered appearance through their respective authorized representatives and the union filed its statement of claim and the management also filed its written statement, but inspite of all the opportunities, the union has not filed its rejoinder. Both the parties are found absent since 08.05.2018, i.e., on six consecutive dates.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of regularization of Shri Pintu Das, Part-time Sweeper at Section V, Salt Lake Branch, Kolkata as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

5. Therefore, the reference is disposed of accordingly.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 23rd July, 2019

नई दिल्ली, 2 अगस्त, 2019

का. आ. 1412.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, ईरनाकुलम के पंचाट (संदर्भ सं. 39/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08. 2019 को प्राप्त हुआ था।

[सं. एल–35011/01/2014–आईआर (बी– II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 2nd August, 2019

S.O. 1412.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Ernakulam as shown in the Annexure, in the industrial dispute between the management of Cochin Port Trust, and their workmen, received by the Central Government on 02.08.2019.

[No. L-35011/01/2014-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Friday the 19th day of July 2019, 28th Asadha 1941)

ID No. 39 of 2014

Workman	:	The General Secretary Cochin Port Staff Association Wellingdon Island Cochin
		By Adv. A. V. Xavier
Management	:	The Chairman Cochin Port Trust Wellingdon Island Cochin
		By M/s.B.S.Krishnan Associates

This case coming up for final hearing on 11.06.2019 and this Tribunal-cum-Labour Court on 19.07.2019 passed the following.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No.L-35011/01/2014-IR(B-II) dt.13.06.2014 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

> **"1. Whether the action of the management of Cochin Port Trust in withdrawing the honorarium @7.5% of basic pay paid to 20 member of employees of Power House Section of Electrical Section from October 2011 without issuing 21 days notice u/s 9A of the ID Act is justified? 2. Whether the action of the management of Cochin Port Trust in stopping the honorarium to the employees during the pendency of conciliation proceedings amounts to violation of Section 33 of ID Act? 3. What relief the workmen are entitled to?"**

The Government of India Ministry of Labour vide its Corrigendum dt.25.08.2015 partially modified the terms of reference as follows:

> **1. "Whether the action of the management of Cochin Port Trust in withdrawing the honorarium @7.5% of basic pay paid to 20 Electrical Staff at Power House Station and @3% of basic pay to Electrical Staff at CFH sub-station from October 2011 without issuing 21 days notice under ID Act is justified?"**
>
> **2. "Whether the action of the management of Cochin Port Trust in stopping the honorarium to the employees during the pendency of conciliation proceedings amounts to violation of Section 33 of ID Act?"**

3. "What relief the workmen are entitled to?"

3. On receipt of the adjudication reference, notice was issued to both the parties. The union filed their claim statement. According to the union, in the year 2004 3MVA DG set was purchased and installed by management for the Electrical division of the Mechanical Engineering Department. When the trade unions demanded for the recruitment of new staff for the operation of the new DG set the management came forward to pay additional benefit of honorarium to the employees of Power House section of the Electrical division for operating the DG set. The order to this effect was issued on 13.09.2014, where it is specifically mentioned that the honorarium will be withdrawn whenever alternate arrangements are made to operate the new DG set. Along with this, the management also granted honorarium @ 3% of basic pay to the Electrical staff at Cochin Fisheries Harbour Substation for operating a new 100KV DG set. The concerned Electrical staff were enjoying the benefits continuously and it was also protected by Bipartite Wages Negotiating Committee Settlement under Section 12(3) of the ID Act entered between the management and the union. While so the management issued an order dt.12.10.2011 by which the above benefits were discontinued with effect from 01.10.2011. No notice under Section 9A have been served on the concerned employees before discontinuing the payment of honorarium without making alternate arrangements for the operation of the DG set. The union took up the matter with the management and also Regional Labour Commissioner(C), Ernakulam. The union also served a strike notice to the management against the unilateral action. In the conciliation proceedings the Regional Labour Commissioner (C) issued an order of status quo which is not implemented by the management.

4. The management filed written statement denying the above allegations. According to the management, Cochin Port Trust is governed by the provision of Major Port Trust Act. Till 2004 there were only 2 numbers of DG sets in the new Power House of Cochin Port Trust. The 20 employees of new Power House were posted round the clock in 3 shifts and they used to operate these DG sets in the event of power failure. The Port's incoming supply was through two 11 KV feeders from KSEB, Perumanoor Substation. There used to be frequent power interruptions and frequent load restrictions by KSEB. Hence a new 11KV 2.5 MW DG set was installed in the new Power House of Cochin Port Trust for meeting critical power requirements. This DG set was commissioned in September 2004. The unions demanded appointment of new employees to operate the new DG set. In the discussion with the management the unions agreed for an honorarium of 7.5% of the basic pay. In the order issued it was also specified that the honorarium will be withdrawn when alternate arrangements are made. The honorarium was an internal arrangement and was not on the basis of any settlement under Section 12 (3) of the ID Act. The management commissioned a new 110KV Substation in December 2008 and the DG sets were rarely operated thereafter. The Cochin Fisheries Harbour was also maintaining a small 100 KVA DG set for meeting critical requirements. The staff deployed that were also being paid honorarium at 3% of basic pay additionally for running the DG set. This honorarium was also stopped as part of the austerity measures. The wages, allowances and service conditions of employees are decided by Bipartite Wage Negotiation Committee Settlement and there is no such provision in the settlement to pay additional benefits. After commissioning of 110KV Substation, the stability and reliability of power supply has improved and power outages have substantially reduced and DG sets are operated very rarely. Hence the management decided to withdraw the additional honorarium. This is done as per the original order wherein it was stated that the additional honorarium will be withdrawn once alternate arrangements are made. The engine hour meter reading of the new DG set as on 29.12.2008 is 868 hours and as on 08.06.2015 it is 974 hours. Thus the total hours the DG set worked between December 2008 and June 2015 is only 106 hours. Further the DG set was under repair from 21.11.2009 to 19.04.2011 ie., for a period of nearly 1½ years. Further, Trial run will have to be performed for the DG set for 10-15 minutes the every 15 days. Thus the total trial run hours will be around 22 hours. Thus the DG sets worked only for 84 hours, during power failure, in a span of 7 years. Since there is no change in service condition while stopping the honorarium no notice under Section 9A of the Industrial Disputes Act is contemplated. There is no violation of Section 33 or Section 12(3) of the ID Act.

5. The union filed rejoinder retreating their earlier position that the withdrawal of the honorarium paid to the workers without following procedure is irregular, illegal and is required to be setaside.

6. On conclusion of pleadings the union examined WW1 and marked exbts.W1, W2, M1 and M2. Management examined MW1 and marked Exbt. M3 to M5.

7. The issues to be decided in this reference are;

1. Whether the action of the management in withdrawing the honorarium from October 2011 without issuing notice under Section 9A of the ID Act is justified?
2. Whether there is any violation of provisions of Section 33 of ID Act in stopping the honorarium of employees during the pendency of conciliation proceedings?
3. What is the relief the workman is entitled?

8. Issue No.1

There is no dispute regarding the fact that a new 3 MVA DG set was installed by the management for the Electrical Division of the Mechanical Engineering Department. It has come out in evidence that the union demanded recruitment of new staff for operating the new DG set. Since there was recruitment ban by Government of India, the management decided to extend an honorarium of 7.5% of the basic pay to 20 numbers of employees of the Power House section. There is also no dispute regarding the fact that it was agreed to pay an honorarium @ 3 % of basic pay to Electrical staff at CFH Sub-station. Exbt.M1 order dt.30.09.2004 through which the honorarium of 7.5% was extended to the employees of Power House section also specifies that the honorarium will be withdrawn when alternate arrangements are made to operate the new DG set. According to the union this benefit of honorarium was withdrawn by the management vide Exbt.M2 order dt.12.10.2011 without making any alternate arrangements for operating the DG set. The case of the management is that there were 2 DG sets already in operation upto 2004. In the year 2004, the power supply to the management premises was erratic and because of the fluctuation in the supply of power they were forced to install a 3rd DG set. The existing 2 Generators were being operated by the electrical staff. When the new Generator is installed the union demanded recruitment of new staff to operate the same. As a compromise the management agreed to pay 7.5% honorarium to the employees deployed in Power House till alternate arrangements are made to run the new DG set. In the year 2008 a new 110 KV Sub-station was commissioned by the Port and the stability and reliability of power supply has improved and power failures have substantially minimized. According to MW1, the DG sets are used only for 76 hours during a span of 7 years from 2008 to 2015. He also submitted in the witness box that the DG set was not operational for 1 ½ years during 2009-2011 which had no impact on the power supply to the management premises. The repair and maintenance of the DG set was not considered a priority item for the reason that there is minimum dependence on DG set for power supply.

9. The learned Counsel for the union submitted that apart from the illegality of withdrawing the benefit of honorarium which was being paid to the employees for more than 7 years, the question involves in this reference is whether the procedure required by law was followed before withdrawing the benefit. According to the learned Counsel for the union, the union is entitled to 21 days notice under Section 9A of Industrial Disputes Act, 1947. According to the learned Counsel for the management the benefit of honorarium paid to the employees of the Power House and Cochin Fisheries Harbour for maintaining DG sets will not come within 4th schedule to Section 9A of Industrial Disputes Act. The learned Counsel for the management explained the meaning of honorarium as exgratia payment made, without the giver recognizing themselves as having any liability or legal obligation to a person for his/her service for which fees are not traditionally required. The Counsel for the union argued that section 9A notice is required for withdrawing any customary concession or privilege and particularly so when it has become part of Section 12(3) settlement.

10. On a perusal of Exbt.M1 order it is very clear that the honorarium that was being agreed to by the management was temporary in nature and it can be withdrawn when alternate arrangements for running the DG set is made. The union is relying on wording in Exbt.M1 that the honorarium can be stopped only when alternate arrangements for running new DG set is made. The management case is that, after installation of 110KV Sub-station by the port, the operation of the generator has become very rare and this alternate arrangement shall be taken into account as a reason for withdrawing the benefit. As come out in evidence the DG set was not working for more than 1½ years without any power interruption in the management premises. The management did not see any urgency to repair the DG set as the power supply to their premises was not interrupted. This will clearly show that the operation of the new DG set itself has become redundant and hence as rightly pointed out by the learned Counsel for the management there was no need to make any alternate arrangements for operating the new DG set. The learned Counsel for the union pointed out that as per Exbt.M2 order the reason given for discontinuing the honorarium with effect from 01.10.2011 is financial difficulty and not the installation of 110KV Sub-station by the management. Though the 110KV Sub-station was commissioned in 2008 the management continued the benefit till 2011 and reviewed the extension of the benefit because of the financial difficulties of the management. It is difficult to accept the argument of the union that there shall be an alternate arrangement for running the DG set even if an alternate arrangement is made uninterrupted power supply, before the withdrawal of honorarium.

11. The specific case of the union is that the honorarium has become part of settlement on wage revision under Section 12 (3) of the ID Act and any change in this settlement warrants notice under Section 9A of the Act. As per clause 43 of Exbt.W1, Settlement on wage revision, Port and Dock Workers at Major Ports, with effect from 01.01.2007 states that as a consequence of the implementation of the settlement, any facility, privilege, amenity, right, benefit, monitory or otherwise or concession to which an employee or a category of employees be entitled to by way of any award, practice or usage in force shall not be withdrawn, reduced or curtailed except to the extend and manor as explicitly provided for in the settlement. According to the union this saving clause shall protect the honorarium given to a section of employees as part of section 12(3) settlement. But it can be seen from Exbt.M1 that there is an inbuilt clause to terminate the benefit in the event of making alternate arrangements. Hence it may not be correct to argue that the termination of the benefit requires notice under Section 9A of the Act. It will be too technical to argue that even if alternate arrangements are made to streamline the power supply the benefit of honorarium cannot be withdrawn without providing an alternate arrangements for running the DG set.

12. In view of the above, I am inclined to hold that the withdrawal of the additional benefit of honorarium will not warrant a notice under Section 9 A of ID Act.

Hence the issue is answered against the union and in favour of the management.

13. Issue No. 2

According to the learned Counsel for the union the management withdrew the benefit of honorarium to the employees of Power House and CFH during the pendency of conciliation before the Regional Labour Commissioner (C). This is a clear violation of Section 33 of ID Act that during the pendency of any conciliation proceeding before a Conciliation Officer no employer in regard to any matter connected with dispute alter, to the prejudice of the workmen concerned in such disputes, the conditions of service applicable to them immediately before the commencements of such proceedings.

14. As evidenced by Exbt.W2 the strike notice by the union is dt.15.10.2011 and the withdrawal of honorarium as per Exbt.M2 is dt.12.10.2011. The conciliation proceedings started vide letter no.2/20/2011/51 dt.17.10.2011 issued by the Regional Labour Commissioner (C) to the management. Hence it can be seen that the process of conciliation started after the benefit of honorarium was withdrawn vide Exbt.M2 order dt.12.10.2011.

Hence it is very clear that the benefit is withdrawn before the conciliation proceedings started and as such there is no violation of section 33 of ID Act. Issue no.2 is answered against the union and in favour of the Management.

15. Since the issues no. 1 & 2 are answered against the union, they are not entitled for any relief as per the claim.

In the result an award is passed finding that the management of Cochin Port Trust is justified in withdrawing the honorarium @ 7.5% of basic pay paid to 20 electric staff at Power House Station and @ 3% of basic pay to electric staff at CFH Sub-station from October 2011 without issuing 21 days notice under ID Act. Further the management of Cochin Port Trust has not violated Section 33 of ID Act since the benefit of honorarium was withdrawn before the conciliation proceedings are initiated. Further it is found that the union is not entitled for any benefit as claimed by them.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Assistant, transcribed and typed by him, corrected and passed by me on this the,19th day of July 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Union

WW1 -18.04.2016 Sri.Thomas Sebastian

Witness for the Management

MW1 -28.02.2017 Sri.C. Rajasekharan

Exhibts for the Union:-

W1 -Settlement on wage revision Port & Dock workers at the Major Ports w.e.f. 01.01.2007

W2 -Earlier report of Conciliation Officer No. 2 (20)/2007/B.1 dt.04.02.2014

M1 -Order no.A6/honorarium/2004-M dt.13.09.2004 sanctioning honorarium

M2 -Order no.A7/honorarium/2007-m dt.12.10.2011 discontinuing Honorarium w.e.f. 01.10.2011

Exhibts for the Management:-

M3 -Letter no.A7/REC/honorarium/2011-M dt.20.10.2011from Chief Mechanical Engineer to Regional Labour Commissioner (C)

M4 -Letter no.F1/MISC/13/M dt.15.06.2013 from Chief Mechanical Engineer to Regional Labour Commissioner (C)

M 5 -Letter no.A7/REC/honorarium/2011-M dt.27.12.2011from Chief Mechanical Engineer to Regional Labour Commissioner (C)

नई दिल्ली, 2 अगस्त, 2019

का. आ. 1413.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, पुणे (महाराष्ट्र) के पंचाट (संदर्भ सं. 84/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08. 2019 को प्राप्त हुआ था।

[सं. एल–12012/13/2009–आईआर (बी–II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 2nd August, 2019

S.O. 1413.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 84/2009) of the Labour Court, Pune (Maharashtra) as shown in the Annexure, in the industrial dispute between the management of Canara Bank, and their workmen, received by the Central Government on 02.08.2019.

[No. L-12012/13/2009-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE SMT. MADHURA A. MULIK, PRESIDING OFFICER, LABOUR COURT NO. 3, PUNE

Reference (I.D.A.) No. 84/2009.

Exh. No. **51**

Dispute Between :

The Dy. General Manger, Canara Bank,
DA Cell/HRM Section, Circle Office, 1183, Sadashiv Peth,
PUNE – 411 030 … First party

AND

Shri. Dhage Gorakhnath Dattatraya, D-3, Amarendra Society,
Ganesh Mala, Parvati, Pune. … Second party

Adv. Shri A.K. Gupte for the first party

Adv. Shri U.S. Gopale for the second party

AWARD

(Delivered on 3rd June, 2019)

1. This is a reference, forwarded by the Central Government for adjudication of its following Schedule :

"Whether the ACtion of MANAgement of CANARA BAnk in AWArding peNAlty of compulsory retirement to Shri. G. D. DhAge is legAl And justified ? WhAt relief the concerned workmAn is entitled to ?"

2) Brief facts of the case :

The second party appeared in present matter and filed his statement of claim at **Exh-08**. It is submitted that he was working as 'Clerk' in first party Bank and was getting Rs.20,000/- P.M. salary. In his 27 years service no misconduct was committed by him. When he was working in Bhawani Peth, Pune Branch as a Special Assistant, it was told by first party that he has committed misconduct and one charge-sheet was issued to him. The first party decided to conduct departmental enquiry against him. It is submitted that he was told not to appoint his defence representative. The whole enquiry proceeding was conducted in English language. He has no legal knowledge. The enquiry conducted against him is not legal and opportunity to defence was not given to him. The Bank has not filed any Police Complaint against him. The first party pre-determined to terminate his services and conducted departmental enquiry illegally. The first party Bank compulsory retired him. The said act of the Bank is unfair labour practice. Hence, he has prayed to reinstate him with continuity of service and consequential benefits.

3) The first party appeared in present matter and filed its written statement at **Exh.17**, wherein all adverse allegations raised in statement of claim are totally denied. It is submitted that the second party was working as Special Assistant since 23/08/2001. He was entrusted with the supervisory work, amongst other, of the Inward Site Collection (ISC) Department. While working the Branch Manager received five ISC Bills from Mysore main Branch of first party drawn on M/s. Chandan Agencies. The said bills duly entered in Tappal Register, were handed over to the second party against his acknowledgment for further action. On 15/05/2004 there was an enquiry from Mysore Branch about the fate of the above said bills. On enquiry with second party about the same it was revealed that the second party kept these cheque in his house without debiting to M/s. Chandan Agencies account. The total amount of five ISC Bills was Rs.7,66,230/-. However, the second party handed over the relevant L.R.'s and D.D.'s. It was observed that M/s. Chandan Agencies Account was not having balance. The second party made fictitious noting in ISC Register about the realization of the said bills, though no payment was received from the party. The proprietor of M/s. Chandan Agencies was found absconding. Thus, the second party committed a serious misconduct, causing substantial financial loss to the Bank. The second party's O.D. Account had revealed various suspicious cash deposits.

4) On these background explanation was called from the second party to which second party filed his reply, which were examined and found not convincing. The second party was served with charge-sheet dated 29/07/2004. The first party conducted a domestic enquiry into the charges levelled against the second party as per provisions of Canara Bank Service Code, inconsonance with the Bipartite Settlements and Award governing second party. On first day of hearing of enquiry the second party denied the charges and on next date unconditionally admitted all the charges and requested not to proceed with the enquriy. However, to give a proper opportunity the enquiry officer proceeded further with the enquiry. The second party was given all the opportunity in enquiry. The second party knows the English language and hence no prejudice is caused to him because of the conduct of the enquiry in English. There is no need of any legal knowledge as claimed by the second party. The Bank has not made any Police Complaint is irrelevant in view of the admission and facts established in the enquiry. As the acts of misconduct committed by the second party are of serious nature there was no question of continuing the second party in the employment. The first party is dealing with the public money and hence it cannot condone the misconduct committed by the second party. There is no substance in the demand of second party. Hence, it is prayed to reject the reference.

5) On the rival pleadings of the parties my learned predecessor has framed issues at **Exh.18**. Amongst them **issues No. 1 and 2** regarding legality, fairness and propriety of the enquiry and sufficiency of the evidence before the enquiry officer and regarding perversity of the findings are treated as preliminary issues. Those are decided vide order dated 29/11/2018. In view of joint pursis **Exh. 50**, **issue No. 4 is deleted**. Now remaining **issue Nos. 3, 5 & 6** are for my consideration. I have recorded my findings thereon for the reasons thereof as follows.

ISSUES	FINDINGS
(1) Whether enquiry conducted by the first party is legal, fair and proper ?	.. In the affirmative. Already decided on 29/11/2018
(2) Whether the evidence before the enquiry officer was sufficient to prove the misconduct &	.. In the affirmative. Already decided on 29/11/2018
Whether findings of the enquiry officer are perverse as alleged?	In the negative. **Already decided on 29/11/2018**
(3) Whether the evidence before the Court is sufficient to prove the misconduct?	Does not survive.
If yes, whether the punishment is disproportionate to the misconduct as contended?	In thenegative.
[4) Whether the First party has engaged in unfair labour practice as alleged?]	In view of joint pursis Exh. 50, this issue is deleted.
(5) Whether the Second party is entitled to the reliefs prayed for?	In the negative.
(6) What Award?	Reference answered in negative.

REASONS

(6) On the remaining issues the second party has examined himself at **Exh. 40**. In support of his contention he has not produced any documentary evidence.

Per contra the first party has not adduced any oral evidence, but relied upon whole enquiry proceeding produced at **list Exh. 19**, reply to the findings of the enquiry officer by the second party at **Exh. 41**, letter dated 06/03/2005 by the second party to the appellate authority **Exh. 42**, order of appellate authority dated 24/02/2005 **Exh. 43**. The first party has filed evidence close pursis **Exh. 46**.

Heard Ld. Advocate for both sides. Perused written synopsis of argument filed by the second party at **Exh. 48**.

AS TO ISSUE NO. 3 :-

(7) This issue has two parts. The first part is regarding as to whether evidence before the Court is sufficient to prove the misconduct and the second part is if yes, then whether the punishment is disproportionate to the misconduct as contended. While deciding preliminary issues regarding fairness, legality and propriety of the enquiry conducted against the second party and regarding perversity of findings this Court by its order dated 29/11/2018 already held and declared that the enquiry conducted against the second party is legal, fair and proper and findings of the enquiry officer are based on evidence before him, hence are not suffering from perversity. The order on preliminary issues is yet not challenged by the second party before any Higher Authority. Now taking into consideration above mentioned circumstances there is no question to decide again whether the evidence before the Court is sufficient to prove the misconduct committed by the second party or not. In case where the court has come to the conclusion that there is no sufficient evidence before the enquiry officer to prove the misconduct of charge-sheeted employee and on this ground whole enquiry is vitiated then on its prayer in written statement, employer has right to prove the misconduct of its charge-sheeted employee before the Court by adducing reliable evidence. But in present matter, this Court has already come to the conclusion that the charges levelled against the second party are proved during the enquiry. Hence first part of the issue No.3 does not survive.

(8) The second part of this issue is regarding whether the punishment imposed on the second party is disproportionate to the misconduct as contended by him. Admittedly, the charge- sheet dated 29/07/2004 issued to the second party for misconduct within meaning of Chapter XI Regulation 3(j), (m) and (i) of Canara Bank Services Code. These charges are levelled for his act of willful damage or attempt to cause any property of the bank or of its customers and doing any act which is prejudicial to the interest of the bank and lastly for gross negligence involving or likely to involving bank in serious loss. He was also charge-sheeted for violation of Regulation under 2(A) of Chapter XI of Canara Bank Services Rule. It was alleged that ISC Bills were received by the Branch from Mysore Main Branch for collection and said bills were handed over to the second party for lodging and realization against payment. On receipt of enquiry from Mysore Main Branch on 15/05/2004 about the fate of above mentioned bills and some lapses are observed on the part of the second party in handling the said bills. It was also alleged that the second party has exposed the Bank to huge financial loss. The first party initiated departmental enquiry into the said charges. After completion of evidence of both sides the enquiry officer came to the conclusion that the charges levelled against the second party have been proved conclusively and held the second party guilty of misconduct vide his findings dated 29/11/2004. The second party submitted his reply to the findings on 23/12/2004, which is produced at **Exh. 41**. Thereafter vide order dated 27/01/2005, the punishment of compulsory retirement was imposed on the second party. As per the second party said punishment is wrong one.

(9) It is strongly argued for the second party that he has rendered 27 years service in first party bank. His past service record is clean and unblemished. He has not committed any misconduct as mentioned in the charge-sheet. There was no financial loss occurred to the bank. It is argued that punishment of compulsory retirement is not provided in service rules applicable to the second party. It is further argued that as per Section 11A of the Industrial Disputes Act, this Court can interfere in the punishment. On the contrary it is strongly argued for the first party that due to the misconduct committed by the second party the first party has suffered heavy financial loss. Such kind of act was not permitted and not expected from any employee of the bank. The second party committed serious misconduct, hence he is not entitled for any kind of sympathy from this Court. The punishment of compulsory retirement imposed on the second party, there is no stigma on his career. All retiremental benefits were provided to the second party which he availed. No financial loss caused to the second party. There was nothing wrong, unjustifiable or illegal in the action taken by the first party.

10) It is well settled that the imposition of the punishment is within discretion of the management, but when punishment for proved misconduct is unconscionable or so grossly proportionate to the nature of the misconduct, Court may able to draw an inference of victimization merely from punishment inflicted. So far as remaining issues regarding proportionality of punishment and reliefs claimed by the second party are concerned the second party has examined himself at **Exh. 40**. His affidavit in chief is nothing but reproduction of facts and circumstances mentioned in his statement of claim. During cross-examination he has admitted his reply to the findings dated 23/12/2004. Learned Advocate for the first party attracted my attention towards this letter wherein the second party admitted the charges

levelled against him unconditionally. He has further submitted that he had made all efforts to trace the customer so as to make the recovery. He had also deposited Rs. 70,000/-. Further he submitted that he shall make more efforts towards recovery. Lastly he has submitted to take matter leniently. The first party further relied upon copy of Appeal made to the appellate authority, General Manager, Canara Bank. In this appeal the appellate authority held that there is no reason to interfere either with findings of the enquiry officer or with orders of disciplinary authority and lastly confirmed punishment and rejected appeal. It is seen that in present matter serious charges were levelled against the second party. The second party admitted charges levelled against him unconditionally during enquiry and requested not to pursue with the enquiry proceeding and prayed to take matter leniently. The learned Advocate for the second party strongly argued that the charge of misappropriation is not levelled against the second party. He has not used any amount. Further the bank has failed to take action against concerned customer. It is also pertinent to note here that the charge of misappropriation is not levelled against the second party but other charges are also serious charges. As discussed earlier misconduct of the second party is proved before the enquiry officer by the reliable evidence. The learned Advocate for the first party pays my attention towards Chapter XI of Canara Bank Services Code. Its point No.4 provides that -

> "An employee found guilty of gross misconduct may;
>
> (a)……..,
>
> (b)…..,
>
> (c) be compulsorily retired with superannuation benefits i.e. pension and/or provident fund and gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment."

It is seen that the second party never come with the case that retirement benefits were not provided to him. It appears that though the punishment of compulsory retirement imposed on the second party, all retirement benefits were provided to him.

(11) Ld. Advocate for the first party further relied upon Janatha Bazar etc. vs. Secretary, Sahakari Noukarara Sangh etc., reported in 2000 II CLR 568(S.C.) wherein it is held that –

> "Law is well-settled that once act of misappropriation is proved may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service and as such impugned order passed by the High Court and the award of the Labour Court are set aside."

Further relied upon Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, reported in 2001 I CLR 699 (S.C.), wherein it is held that –

> "The punishment of dismissal was proper and should not have been set aside but reinstatement is not set aside since respondent has superannuated. However it is held that he is not entitled to back wages."

I have gone through these case-laws. It is seen that these case laws are regarding charge of misappropriation and matter in hand, there is no charge of misappropriation levelled against the second party. Hence it is my humble submission that the ratio laid down in above mentioned case-laws is not helpful to the first party.

(12) Further the first party further relied upon Uttaranchal Transport Corporation Vs. Sanjay Kumar Nautiyal, reported in 2008 I CLR 888(S.C.), wherein it is held that –

> "Industrial Disputes Act, 1947 – S.11-A – Dismissal from service – Respondent – Conductor dismissed from service for misconduct, after holding enquiry – His Appeal dismissed – Labour Court found him guilty of the charge – But taking lenient view, passed Award for reinstatement with 50% back wages, and reduced punishment of dismissal to stoppage of two increments without cumulative effect- Writ petition by appellant was dismissed by High Court – Hence this Appeal – Held that Labour Court and High Court not justified in concluding that punishment awarded to respondent was disproportionate."

Further relied upon - SBI and Anr. Vs. T.M. Solanki, Ex- employee of S.B.I., reported in 2008 I CLR 895(Guj. H.C.) wherein it is held that –

> "Industrial Disputes Act, 1947 – S.11-A – Discharge from service – After holding an enquiry management discharged respondent from service for committing grave financial irregularity – His Appeal dismissed – In the dispute raised by him, Labour Court taking lenient view, exercised its power u/s. 11-A and awarded reinstatement, but without back wages – Hence this petition – Held that lenient view taken by Labour Court wholly unjustified, where confidence of the customers in financial integrity of the Bank and its employees, is of paramount interest, impugned Award of Labour Court, after a finding that enquiry was properly conducted, deserves to be quashed and set aside."

I have gone through these case-laws. Considering the facts and circumstances the ratio laid down in above mentioned case-laws is helpful to the first party.

(13) Considering facts and circumstances and considering the seriousness of misconduct committed by the second party it is acceptable that the punishment of compulsory retirement inflicted on him is not shockingly disproportionate to the proved misconduct. The second party is failed to show mitigating circumstances to interfere in the punishment. On the contrary it is acceptable that the punishment of compulsory retirement inflicted on the second party is just and proper. Hence I answer part two of issue No.3 in the negative.

AS TO ISSUE NOS. 5 & 6 :-

14) The second has prayed for direction against the first party for his reinstatement with continuity of service and full back-wages. As discussed earlier charges levelled against the second party are proved during the enquiry and punishment of compulsory retirement imposed on the second party is held as not disproportionate, hence the second party is not entitled for any relief claimed by him. Hence I answer issue No. 5 in the negative and in answer to issue No. 6 following order is passed.

ORDER

(1) Reference is answered in negative.

(2) No order as to costs.

(3) Award be sent to the appropriate Government for publication.

Date : 03.06.2019

SMT. MADHURA A. MULIK, Presiding Officer

Argument heard on :- 23/05/2019

AwArd DicTATED On :- 03/06/2019

AwArd TrANscribed On :- 03/06/2019

AwArd Checked & Signed On :- 04/06/2019

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1414.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 18/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08.2019 को प्राप्त हुआ था।

[सं. एल-29012/19/2006-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 2nd August, 2019

S.O. 1414.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 02.08.2019.

[No. L-29012/19/2006-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH JULY 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 18/2007

I Party	**II Party**
Sh. B. H. Chandregowda, S/o Late. Sh. Honnegowda, Since deceased by LR's (1a) Smt. Vanajakshi, D/o Late. B.H. Chandre Gowda Santhe Shivara, Nuggehalli Hobli, Santhe Shivara Post, Channarayapatna Taluk, Hassan District – 573131 (1b) Smt. Nethravathi, D/o Late. B.H. Chandre Gowda, W/o Sri.Venkatesh, Ganganaghatta Village and Post, Nonavinakere Hobli, Titptur Taluk, Tumkur – 572201. (1c) Smt. B.C. Bhavya D/o Late B.H. Chandre Gowda, W/o K.S. Suresh, Bidare Village, Kembalu Post, Bagur Hobli, Channarayapatna Taluk, Hassan – 573111.	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road, BANGALORE – 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. T K Veda Murthy

AWARD

The Central Government vide Order No. L-29012/19/2006-IR(M) dated 23.02.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the management of Mysore Minerals Limited is justified in terminating the services/ premature superannuating of the services of Sri B.H. Chandregowda w.e.f 09.06.1998? If not, to what relief the workman is entitled to?"**

1. The dispute was raised by the 1st Party workman Sh. B H Chandre Gowda, who is now expired and represented by his 3 children - Class-I Legal heirs.

The claim of the 1st Party is, he joined the service of the 2nd Party on 01.07.1986 at its Mining Unit Goblahalli Mines and was transferred to Bhaktarahalli Mine Channarayapatna Taluk, Hassan District as a Mining worker. His date of birth is 01.10.1958 as per the Horoscope maintained by his parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though he was entitled to continue in service up to 01.10.2016, on subjecting him for a medical examination 2nd Party refused employment on 09.06.1998. The Medical Certificate is illegal, and Medical

Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. His signature was obtained by the 2nd Party Officials on several applications. Subsequently EPF Authority informed him that he is not eligible for pension till reaching the age of superannuation. Several of his co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001 (S-RES) came to be rejected on 12.06.2002. The Employee / Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer / Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders Namely Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules under Rule/ Clause 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

That the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but he did not avail the opportunity extended to him. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, he has raised the dispute after a lapse of 9 years. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. The 1st Party was found incapacitated to work in the Mine as per the Medical Report. He was also found aged more than 58 years as per Medical Report. Hence, it was decided to terminate him from the services. He was given opportunity to prefer his appeal before Appellate Medical Board within 30 days, if he is aggrieved by the said report, but he did not avail the said opportunity. He opted to avail monetary benefits arising from his termination i.e., EPF, Gratuity, Leave Pension. He has amicably settled the monetary benefits with the 2nd Party and has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law. He is not entitled for any family pensionary benefits as per law. He is employed.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. Through him attested copy of the 'B Register' pertaining to the 1st Party was marked as Ex M-1. As per the said document his date of Birth is still maintained as 01.07.1957. The witness identified the Photostat copies of the documents confronted to him as Ex W-1 to W-5 they are the Scheme Certificate under Employees Provident Fund Organisation Employees' Pension Scheme 1995 pertaining to the 1st Party, Termination Order dated 09.06.1998 and the judgments of the Hon'ble High Court.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered the loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. Had if the 1st Party continued in service up to his superannuation, he would have been in service up to 2017. Admittedly it was an enmasse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees who had approached the Hon'ble High Court.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The so-called Medical Certificate is not made available by the 2nd Party. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if he was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed his relationship, his claim cannot be sustained.

7. It is a point to be noted that the sole document for the management i.e. the Photostat copy of the B register extract pertaining to the 1st Party even today indicates his date of birth as 01.07.1957 that being so, there is merit in the contention of the 1st Party, that without changing his age in the statutory records, his service was terminated. He has lost around 19 years of service, probably for the reason that the 2nd Party suffered financial loss and was in urgency to disembrace their workforce to mitigate their hardship. Thus, they resorted to Medical Examination of the workman. IT appears that, only on the basis of clinical examination they declared the age of the workman. The 1st Party due to ignorance, illiteracy or for want of information might not have challenged the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected by the 2nd Party.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if wanted to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F, G, H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating his service / premature superannuating w.e.f 09.06.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased. One of the daughters of the deceased workman has testified before the Tribunal that her deceased father subsequent to his termination was not gainfully employed.

10. On one side there is the cause of the 1st Party workman who lost his avocation, in the mid-way of his career by curtailing his service by 19 years, on the other side there is evidentiary material that, he had accepted the terminal benefits and did not challenge his illegal removal for 9 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases he raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947. Moreover the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 30,000/- (Rupees Thirty Thousand Only) jointly to the daughters of deceased workman Sh. B.H. Chandregowda.

AWARD

The reference is accepted

The 2nd Party is directed to pay Rs. 30,000/- (Rupees Thirty Thousand only) to Smt. Vanajakshi, Smt Nethravathi and Smt. B.C Bhavya, daughters of the deceased 1st Party workman Sh. B.H. Chandre Gowda within 2 months from the date of publication of the Award in the Official Gazette failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th July, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1415.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 77/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08.2019 को प्राप्त हुआ था।

[सं. एल-29012/14/2007-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 2nd August, 2019

S.O. 1415.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 77/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 02.08.2019.

[No. L-29012/14/2007-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH JULY 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 77/2007

I Party	II Party
Sh. Thimmashetty, S/o Late Kuri Dassappa, Since Deceased by LR's, 1a) Smt. K.T. Manjula, D/o Late Thimma Shetty, 1b) Smt. K.T. Parvathi, D/o Late Thimma Shetty, All are residing at Kenkere Village and Post, Gandasi Hobli, Arasikere Taluk Hassan Distt – 573103	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road, BANGALORE – 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. T K Veda Murthy

AWARD

The Central Government vide Order No. L-29012/14/2007-IR(M) dated 16.05.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the management of Mysore Minerals Limited is justified in terminating the services/premature superannuating of the services of Sri Thimmashetty w.e.f. 06.06.1998? If not, to what relief the workman is entitled to?"**

1. The dispute was raised by the 1st Party workman Sh. Thimmashetty, who is now expired and represented by his 2 children - Class-I Legal heirs.

As per the claim averments the 1st Party joined the service of the 2nd Party on 01.07.1986 at its Mining Unit Goblahalli Mines, and later transferred to Bhaktharahalli Chromite Mines, Channarayapatna Taluk, Hassan District as a Mining worker. His date of birth was 01.07.1944 as per the Horoscope maintained by his parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though he was entitled to continue in service up to 01.07.2002, on subjecting him for a medical examination 2nd Party refused employment on 06.06.1998. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. His signature was obtained by the 2nd Party Officials on several applications. Several of his co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001(S-RES) came to be rejected on 12.06.2002. The Employee/ Writ Petitioner prematurely retired

was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer / Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders Namely Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules under Rule/ Clause 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

That the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but he did not avail the opportunity extended to him. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, he has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. He was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate him from the services. He was given opportunity to prefer an appeal before Appellate Medical Board within 30 days if he is aggrieved by the said report, but he did not avail the said opportunity. The 2nd Party Management relieved him from service on the ground of superannuation by settling him terminal benefits. He has received the terminal benefits and has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. Through him attested copy of the 'B Register' pertaining to the 1st Party was marked as Ex M-1. As per the said document his date of Birth is still maintained as 01.07.1944. The witness identified the Photostat copies of the documents confronted to him as Ex W-1 to Ex W-5 - they are Medical Certificate in Form 'O', termination order dated 09.06.1998 and the judgments of the Hon'ble High Court.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered the loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. Admittedly it was an enmasse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees who had approached the Hon'ble High Court.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The so-called Medical Certificate in Form 'O' certifies that, *he ….. 58 years of age….he is suffering from over aged and he is medically unfit for…...* There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if he was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed his relationship, his claim cannot be sustained.

7. It is a point to be noted that the sole document for the management i.e. the Photostat copy of the B register extract pertaining to the 1st Party even today indicates his date of birth as 01.07.1944 that being so there is merit in the contention of the 1st Party that without changing his age in the statutory records his service was terminated. He has lost around 6 years of service, probably for the reason that the 2nd Party suffered financial loss and was in urgency to disembrace their workforce to mitigate their hardship. Thus, they resorted to Medical Examination of the workman. It appears that, only on the basis of clinical examination they declared the age of the workman. The 1st Party due to his ignorance, illiteracy, or for want of information did not challenge the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected by the 2nd Party.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if wanted to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F, G, H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating his service / premature superannuating w.e.f 06.06.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased. The Daughter of the deceased workman has testified before the Tribunal that her deceased father subsequent to his termination was not gainfully employed.

10. On one side there is the cause of the 1st Party workman who lost his avocation, in the mid-way of his career by curtailing his service probably by 6 years, on the other side there is evidentiary material that, he had accepted the terminal benefits and did not challenge his illegal removal for 9 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases he raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947. Moreover the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 30,000/-(Rupees Thirty Thousand Only) jointly to both the daughters of deceased workman Sh. Thimmashetty.

AWARD

The reference is accepted

The 2nd Party is directed to pay Rs. 30,000/- (Rupees Thirty Thousand Only) to Smt. K.T. Manjula and Smt. K.T Parvathi daughters of the deceased 1st Party workman Sh. Thimmashetty within 2 months from the date of publication of the Award in the Official Gazette failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th July, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1416.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 78/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08.2019 को प्राप्त हुआ था।

[सं. एल-29012/15/2007-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 2nd August, 2019

S.O. 1416.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 78/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 02.08.2019.

[No. L-29012/15/2007-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH JULY 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 78/2007

I Party	**II Party**
Sh. D. Nanjegowda, S/o Late Dasegowda, Since Deceased by LR's 1a) Smt. Honnamma, W/o Late D. Nanje Gowda 1b) Smt. Manjamma, D/o. LateD. Manje Gowda 1c) Smt. Ratnamma, D/o. Late D. Nanje Gowda 1d) Smt. Shivamma, D/o. Late D. Nanje Gowda 1e) Sh. Paramesh, S/o. Late D. Nanje Gowda 1f) Smt. Sunanda, D/o. Late D. Nanje Gowda All are residing at Hullenahalli, Kembalu Post, Bagur Hobli, Channarayapatna Taluk Hassan Distt – 573116. Karnataka.	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road, BANGALORE – 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. T K Veda Murthy

AWARD

The Central Government vide Order No. L-29012/15/2007-IR(M) dated 16.05.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the management of Mysore Minerals Limited is justified in terminating the services/premature superannuating of the services of Sri D. Nanjegowda w.e.f. 28.06.1998? If not, to what relief the workman is entitled to?"**

1. The dispute was raised by the 1st Party workman Sh. B. Nanje Gowda, who is now expired and represented by his widow and 5 children - Class-I Legal heirs.

The claim of the 1st Party is, he joined the service of the 2nd Party on 06.03.1976 at its Mining Unit Byrapura Chromite Mines, Channarayapatna Taluk, Hassan District as a Mining worker. His date of birth is 06.03.1946 as per the Horoscope maintained by his parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though he was entitled to continue in service up to 06.03.2004, on subjecting him for a medical examination 2nd Party refused employment on 28.06.1998. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. His signature is obtained by the 2nd Party Officials on several applications. Several of his co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with

3459/2001 preferred against the said order in W.P No. 5615/2001(S-RES) came to be rejected on 12.06.2002. The Employee/ Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer / Mysore Minerals Limited.

2. It is the further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders Namely Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules under Rule/ Clause 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

That the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but he did not avail the opportunity extended to him. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, he has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. He was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate him from the services. He was given opportunity to prefer his appeal before Appellate Medical Board within 30 days, if he is aggrieved by the said report, but he did not avail the said opportunity. The 2nd Party Management relieved him from service on the ground of superannuation by settling him terminal benefits. He has received the terminal benefits and has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. Through him attested copy of the 'B Register' pertaining to the 1st Party was marked as Ex M-1. As per the said document his date of Birth is still maintained as 06.03.1946. The witness identified the Photostat copies of the documents confronted to him as Ex W-1 to Ex W-5 - they are the Photostat copies of the Membership Application Form of the 1st Party submitted to the Employees Welfare Trust, Termination order of the 1st Party dated 29.06.1998 and the judgments of the Hon'ble High Court.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered the loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. Had if the 1st Party continued in service up to his superannuation, he would have been in service up to 2006. Admittedly it was an enmasse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees who had approached the Hon'ble High Court.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The so-called Medical Certificate is not made available by the 2nd Party. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if he was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed his relationship, his claim cannot be sustained.

7. It is a point to be noted that the sole document for the management i.e. the Photostat copy of the B register extract pertaining to the 1st Party even today indicates his date of birth as 06.03.1946 that being so, there is merit in the contention of the 1st Party, that without changing his age in the statutory records, his service was terminated. He has lost around 8 years of service, probably for the reason that the 2nd Party suffered financial loss and was in urgency to disembrace their workforce to mitigate their hardship. Thus, they resorted to Medical Examination of the workman. It is interesting to note that, only on the basis of clinical examination they declared the age of the workman. The 1st Party due to ignorance, illiteracy or for want of information might not have challenged the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected by the 2nd Party.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if wanted to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F, G, H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating his service / premature superannuating w.e.f 28.06.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased. The Wife of the deceased workman has testified before the Tribunal that her deceased husband subsequent to his termination was not gainfully employed.

10. On one side there is the cause of the 1st Party workman who lost his avocation, in the mid-way of his career by curtailing his service by 8 years, on the other side there is evidentiary material that, he had accepted the terminal benefits and did not challenge his illegal removal for 9 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases he raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947. Moreover the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 30,000/- (Rupees Thirty Thousand Only) to Smt. Honnamma wife of the deceased workman Sh. Nanjegowda since all the children are majors and there is nothing to infer that they are depending on their mother for their livelihood.

AWARD

The reference is accepted.

The 2nd Party is directed to pay Rs. 30,000/-(Rupees Thirty Thousand Only) to Smt. Honnamma Wife of the deceased 1st Party workman Sh. Nanjegowda within 2 months from the date of publication of the Award in the Official Gazette, failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th July, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1417.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 112/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08.2019 को प्राप्त हुआ था।

[सं. एल-29012/28/2007-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 2nd August, 2019

S.O. 1417.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 112/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 02.08.2019.

[No. L-29012/28/2007-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH JULY 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 112/2007

I Party	**II Party**
Sh. Huvappa, S/o Late Shivananjegowda, Since deceased by LR's 1a) Smt. Boramma, W/o Late Huvappa 1b) Smt. Shivamma, D/o Late Huvappa 1c) Smt. Padma, D/o Late Huvappa 1d) Smt. Sunanda, D/o Late Huvappa 1e) Sh. Nanjeshi Gowda, S/o Late Huvappa 1f) Sh. Girish, S/o Late Huvappa, All are residing at K. Byrapur Village, Kembalu Post, Bagur Hobli, Channarayapatna Taluk Hassan Distt – 573111.	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road, BANGALORE – 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. T K Veda Murthy

AWARD

The Central Government vide Order No. L-29012/28/2007-IR(M) dated 21.08.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the management of Mysore Minerals Limited is justified in terminating the services/premature superannuating of the services of Sh. Huvappa w.e.f. 27.06.1998? If not, to what relief the workman is entitled to?"**

1. The dispute was raised by the 1st Party workman Sh. Huvappa, who is now dead expired and represented by his widow and 5 children - Class-I Legal heirs.

The claim of the 1st Party is, he joined the service of the 2nd Party on 11.05.1982 at its Mining Unit Byrapura Chromite Mines, Channarayapatna Taluk, Hassan District as a Care Taker in the Canteen. His date of birth is 11.05.1947 as per the Horoscope maintained by his parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though he was entitled to continue in service up to 11.05.2005, on subjecting him for a medical examination 2nd Party refused employment on 27.6.1998. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. His signature was obtained by the 2nd Party Officials on several applications. Several of his co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001 (S-RES) came to be

rejected on 12.06.2002. The Employee/Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer / Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders Namely Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules under Rule/ Clause 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

That the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but he did not avail the opportunity extended to him. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, he has raised the dispute after lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. The 1st Party was found incapacitated to work in the Mine as per the Medical Report. He was also found aged more than 58 years as per Medical Report. Hence, it was decided to terminate him from the services. He was given opportunity to prefer his appeal before Appellate Medical Board within 30 days, if he is aggrieved by the said report, but he did not avail the said opportunity. He opted to avail monetary benefits arising from his termination i.e., EPF, Gratuity, Leave Pension. He has amicably settled the monetary benefits with the 2nd Party and has no right to raise the dispute.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. Through him attested copy of the 'B Register' pertaining to the 1st Party was marked as Ex M-1. As per the said document his date of Birth is still maintained as 11.05.1947. The witness identified the Photostat copies of the documents confronted to him as Ex W-1 to W-4 - they are Form 'O' Medical Certificate and the judgments of the Hon'ble High Court. As per the Medical Certificate Ex W-1 '*he is suffering from over aged and he is medically unfit for….*'

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered the loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. Had if the 1st Party continued in service up to his superannuation, he would have been in service up to 2007. Admittedly it was an enmasse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees who had approached the Hon'ble High Court.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if he was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed his relationship, his claim cannot be sustained.

7. It is a point to be noted that the sole document for the management i.e. the Photostat copy of the B register extract pertaining to the 1st Party even today indicates his date of birth as 11.05.1947 that being so, there is merit in the contention of the 1st Party, that without changing his age in the statutory records, his service was terminated. He has lost around 9 years of service, probably for the reason that the 2nd Party suffered financial loss and was in urgency to disembrace their workforce to mitigate their hardship. Thus, they resorted to Medical Examination of the workman. It is interesting to note that, only on the basis of clinical examination they declared the age of the workman. The 1st Party due to ignorance, illiteracy or for want of information might not have challenged the Medical Report before the

Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected by the 2nd Party.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if wanted to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F, G, H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating his service / premature superannuating w.e.f 09.06.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased. One of the Sons of the deceased workman has testified before the Tribunal that his deceased father subsequent to his termination was not gainfully employed.

10. On one side there is the cause of the 1st Party workman who lost his avocation, in the mid-way of his career by curtailing his service by 9 years, on the other side there is evidentiary material that, he had accepted the terminal benefits and did not challenge his illegal removal for 9 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases he raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947. Moreover the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 30,000/- (Rupees Thirty Thousand Only) to Smt. Boramma, wife of the deceased 1st Party workman Sh. Huvappa. Since the other claimants being the children of the deceased are majors and there is nothing suggesting that they are the dependents of Smt. Boramma.

AWARD

The reference is accepted

The 2nd Party is directed to pay Rs. 30,000/- (Rupees Thirty Thousand only) to Smt. Boramma, Wife of the deceased 1st Party workman Sh. Huvappa within 2 months from the date of publication of the Award in the Official Gazette, failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th July, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1418.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 113/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08.2019 को प्राप्त हुआ था।

[सं. एल-29012/31/2007-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 2nd August, 2019

S.O. 1418.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 113/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 02.08.2019.

[No. L-29012/31/2007-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH JULY 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 113/2007

I Party	II Party
Sh. Doddegowda, S/o Late Nanjegowda, Since Deceased by LR's 1a) Smt. Sarojamma, W/o Late. Doddegowda 1b) Smt. Shashikala, D/o Late. Doddegowda 1c) Sh. Dayananda, S/o Late. Doddegowda All are residing at N. Thimalapura Village, Nagarnavile Post, Bagur Hobli, Channarayapatna Taluk Hassan Distt – 573131.	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road, BANGALORE – 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. T K Veda Murthy

AWARD

The Central Government vide Order No. L-29012/31/2007-IR(M) dated 21.08.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Mysore Minerals Limited in terminating the services Sri. Doddegowda with effect from 10.09.1998 is justified? If not, to what relief the workman is entitled to?"**

1. The dispute was raised by the 1st Party workman Sh. Doddegowda, who is now expired and represented by his widow and 2 children - Class-I Legal heirs.

As per the claim averments the 1st Party joined the service of the 2nd Party on 01.02.1985 at its Mining Unit Byrapura Chromite Mines, Channarayapatna Taluk, Hassan District as Underground Mining worker. Consequent upon an accident during his duty he suffered injuries and lost his leg. He was hospitalised and treated. Subsequently he was allotted Clerical Work. He was referred for Medical Examination to Hosmat Hospital and the hospital certified that, he was fit to do sedentary work. His date of birth is 01.02.1954 as per the Horoscope maintained by his parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though he was entitled to continue in service up to 01.02.2012, on subjecting him for a medical examination 2nd Party refused employment on 10.09.1998. He was issued termination order dated 13.10.1998. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. His signature was obtained by the 2nd Party Officials on several applications. Several of his co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001(S-RES) came to be rejected on 12.06.2002. The Employee/Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer / Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D. Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders Namely Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules under Rule/ Clause 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

That the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but he did not avail the opportunity extended to him. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, he has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. He was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate him from the services. He was given opportunity to prefer his appeal before Appellate Medical Board within 30 days, if he is aggrieved by the said report, but he did not avail the said opportunity. The 2nd Party Management relieved him from service on the ground of superannuation by settling him terminal benefits. He has received the terminal benefits and has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. Through him attested copy of the 'B Register' pertaining to the 1st Party was marked as Ex M-1. As per the said document his date of Birth is still maintained as 01.02.1954. The witness identified the Photostat copies of the documents confronted to him as Ex W-1 to Ex W-7 - they are the Medical Certificate issued by the Government Surgeon on 03.09.1985, Fitness Certificate from Hosmat Hospital 24.06.1998, Medical Certificate in Form 'O', termination order dated 13.10.1998 and the judgments of the Hon'ble High Court.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered the loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. Admittedly it was an enmasse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees who had approached the Hon'ble High Court.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The so-called Medical Certificate in Form 'O' is incomplete without filling the blanks with necessary details. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if he was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed his relationship, his claim cannot be sustained.

7. It is a point to be noted that the sole document for the management i.e. the Photostat copy of the B register extract pertaining to the 1st Party even today indicates his date of birth as 01.02.1954 that being so, there is merit in the contention of the 1st Party, that without changing his age in the statutory records, his service was terminated. He has lost around 16 years of service, probably for the reason that the 2nd Party suffered financial loss and was in urgency to disembrace their workforce to mitigate their hardship. Thus, they resorted to Medical Examination of the workman. It appears that, only on the basis of clinical examination they declared the age of the workman. The 1st Party workman due to ignorance, illiteracy, or for want of information did not challenge the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected by the 2nd Party.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if wanted to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the I.D Act, which they have omitted. If the refusal of

employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F, G, H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating his service / premature superannuating w.e.f 10.09.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased. The Wife of the deceased workman has testified before the Tribunal that her deceased Husband subsequent to his termination was not gainfully employed.

10. On one side there is the cause of the 1st Party workman who lost his avocation, in the mid-way of his career by curtailing his service probably by 14 years, on the other side there is evidentiary material that, he had accepted the terminal benefits and did not challenge his illegal removal for 9 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases he raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947. Moreover being physically handicapped, he was disabled to do manual work. The reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 30,000/-(Rupees Thirty Thousand Only) to Smt. Sarojamma Wife of the deceased workman Sh. Doddegowda since her both children are majors and there is no evidence that they are dependent on their mother for their livelihood.

AWARD

The reference is accepted

The 2nd Party is directed to pay Rs. 30,000/- (Rupees Thirty Thousand Only) to Smt. Sarojamma Wife of the deceased 1st Party workman Sh. Doddegowda within 2 months from the date of publication of the Award in the Official Gazette failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th July, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1419.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 114/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08.2019 को प्राप्त हुआ था।

[सं. एल-29012/33/2007-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 2nd August, 2019

S.O. 1419.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 114/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 02.08.2019.

[No. L-29012/33/2007-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH JULY 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 114/2007

I Party	II Party
Smt. Giriyamma, W/o Late Thimmegowda, Since Deceased by LR's 1a) Sh. T. Shivanna, S/o Late. Thimme Gowda and Giriyamma 1b) Sh Nagaraju, S/o Late. Thimme Gowda and Giriyamma 1c) Sh. Rame Gowda, S/o Late. Thimme Gowda and Giriyamma All are residing at Chavenahalli Village, Nagarnavile Post, Bagur Hobli, Channarayapatna Taluk Hassan Distt – 573131. Karnataka	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road, BANGALORE – 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. T K Veda Murthy

AWARD

The Central Government vide Order No. L-29012/33/2007-IR(M) dated 22.08.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the management of Mysore Minerals Limited is justified in terminating the services/premature superannuating of the services of Smt. Giriyamma w.e.f. 28.06.1998? If not, to what relief the workman is entitled to?"**

1. The dispute was raised by the 1st Party workman Smt. Giriyamma, who is now expired and represented by her 3 children - Class-I Legal heirs.

As per the claim averments the 1st Party joined the service of the 2nd Party on 15.01.1979 at its Mining Unit Byrapura Chromite Mines, Channarayapatna Taluk, Hassan District as a Mining worker. Her date of birth is 15.01.1942 as per the Horoscope maintained by her parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though she was entitled to continue in service up to 15.01.2001, on subjecting her for a medical examination 2nd Party refused employment on 28.06.1998. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. Her signature was obtained by the 2nd Party Officials on several applications. Several of her co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001(S-RES) came to be rejected on 12.06.2002. The Employee / Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer / Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders Namely Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules under Rule/ Clause 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

That the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but she did not avail the opportunity extended to her. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, she has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. She was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate her from the services. She was given opportunity to prefer her appeal before Appellate Medical Board within 30 days if she is aggrieved by the said report, but she did not avail the said opportunity. The 2nd Party Management relieved her from service on the ground of superannuation by settling her terminal benefits. She has received the terminal benefits and has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. Through him attested copy of the 'B Register' pertaining to the 1st Party was marked as Ex M-1. As per the said document her date of Birth is still maintained as 15.01.1942. The witness identified the Photostat copies of the documents confronted to him as Ex W-1 to Ex W-3 - they are the Photostat copies of the judgments of the Hon'ble High Court.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered the loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. Admittedly it was an enmasse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees who had approached the Hon'ble High Court.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The so-called Medical Certificate is not made available by the 2nd Party. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if she was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed her relationship, her claim cannot be sustained.

7. It is a point to be noted that the sole document for the Management i.e. the Photostat copy of the B register extract pertaining to the 1st Party even today indicates her date of birth as 15.01.1942 that being so, there is merit in the contention of the 1st Party, that without changing her age in the statutory records, her service was terminated. She has lost around 4 years of service, probably for the reason that the 2nd Party suffered financial loss and was in urgency to disembrace their workforce to mitigate their hardship. Thus, they resorted to Medical Examination of the workman. It appears that, only on the basis of clinical examination they declared the age of the workman. The 1st Party workman due to ignorance, illiteracy or for want of information did not challenge the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected by the 2nd Party.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if wanted to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions

of section 25-F, G, H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating her service / premature superannuating w.e.f 28.06.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased. One of the sons of the deceased workman has testified before the Tribunal that his deceased Mother subsequent to her termination was not gainfully employed.

10. On one side there is the cause of the 1st Party workman who lost her avocation, in the mid-way of her career by curtailing her service probably by 4 years, on the other side there is evidentiary material that, she had accepted the terminal benefits and did not challenge her illegal removal for 9 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases she raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947. Moreover the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 10,000/-(Rupees Ten Thousand Only) jointly to the 3 claimants being the children – class-I Legal Heirs of deceased workman Smt. Giriyamma.

AWARD

The reference is accepted

The 2nd Party is directed to pay Rs. 10,000/- (Rupees Ten Thousand Only) to Sh. T. Shivanna, Sh. Nagaraju and Sh. Rame Gowda being the children of the deceased 1st Party workman Smt. Giriyamma within 2 months from the date of publication of the Award in the Official Gazette failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th July, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1420.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 164/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08.2019 को प्राप्त हुआ था।

[सं. एल-29012/55/2007-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 2nd August, 2019

S.O. 1420.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 164/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 02.08.2019.

[No. L-29012/55/2007-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH JULY 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 164/2007

I Party	II Party
Smt. Jayalakshmamma, W/o Late Venkategowda, Since Deceased by LR's 1a) Sh. C.V. Doraiswamy, S/o Late Venkate Gowda, Chavenahalli Village, Nagarnavile Post, Bagur Hobli, Channarayapatna Taluk Hassan Distt – 573131. 1b) Smt. Jayamma, W/o Sh. Jayaram, D/o Late. Venkate Gowda, Muddanahalli Village, Goongurumale Post, Dabbeghatta Hobli, Turuvekere Taluk, Tumkur – 572227. 1c) Smt. Padmavathi, W/o Sh. Bore Gowda, D/o Late. Venkate Gowda, Chikgyave Village, Nelligere Post, Nonavinakere Hobli, Tiptur Taluk Tumkur – 572224. 1d) Smt. Nagamani, W/o Sh. Ganganna, D/o Late. Venkate Gowda, Kanathur Village and Post, Dabbeghatta Hobli, Turuvekere Taluk, Tumkur - 572227	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road, BANGALORE – 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. T K Veda Murthy

AWARD

The Central Government vide OrderNo. L-29012/55/2007-IR(M) dated 17.12.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the termination of Smt. Jayalakshmamma by the management of Mysore Minerals Limited w.e.f. 30.06.1998 is justified? If not, to what relief the workman is entitled to?"

1. The dispute was raised by the 1st Party workman Smt. Jayalakshmamma, who is now expired and represented by her 4 children - Class-I Legal heirs. The 1st Party since expired subsequent to the reference order, her Legal Heirs have filed the claim petition.

As per the claim averments the 1st Party joined the service of the 2nd Party on 14.05.1982 at its Mining Unit Bhaktharahalli Mines, Hassan District as a Mining worker. Her date of birth is 14.05.1982 as per the Horoscope maintained by her parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though she

was entitled to continue in service up to 14.05.2002, on subjecting her for a medical examination 2nd Party refused employment on 30.06.1998. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. Her signature was obtained by the 2nd Party Officials on several applications. Several of her co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001(S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001 (S-RES) came to be rejected on 12.06.2002. The Employee/Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer / Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders Namely Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules under Rule/ Clause 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

That the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but she did not avail the opportunity extended to her. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, she has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. She was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate her from the services. She was given opportunity to prefer her appeal before Appellate Medical Board within 30 days, if she is aggrieved by the said report, but she did not avail the said opportunity. The 2nd Party Management relieved her from service on the ground of superannuation by settling her terminal benefits. She has received the terminal benefits and has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. The witness identified the Photostat copies of the documents confronted to him as Ex W-1 to Ex W-3 - they are the Photostat copies of the judgments of the Hon'ble High Court.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered the loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation, from 58 to 60 years. Admittedly it was an enmasse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees who had approached the Hon'ble High Court.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The so-called Medical Certificate is not made available by the 2nd Party. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if she was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed her relationship, her claim cannot be sustained.

7. Neither the termination order nor the Medical Report is placed before this Court. The admission by the 2nd Party to the effect that, while joining service on 14.05.1982 she has given her date of birth as 14.05.1943 is the basis for this adjudication. In view of the said admission she has lost around 5 years of service, probably for the reason that the 2nd Party suffered financial loss and was in urgency to disembrace their workforce to mitigate their hardship. Thus, they

resorted to Medical Examination of the workman. It appears that, only on the basis of clinical examination they declared the age of the workman. The 1st Party due to her ignorance, illiteracy, or for want of information did not challenge the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected by the 2nd Party.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if wanted to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F, G, H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating her service / premature superannuating w.e.f 30.06.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased. The Son of the deceased workman has testified before the Tribunal that his deceased mother subsequent to her termination was not gainfully employed.

10. On one side there is the cause of the 1st Party workman who lost her avocation, in the mid-way of her career by curtailing her service probably by 5 years, on the other side there is evidentiary material that, she had accepted the terminal benefits and did not challenge her illegal removal for 9 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases she raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947. Moreover the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 30,000/-(Rupees Thirty Thousand Only) jointly to the 4 claimants being the children – class-I Legal Heirs of deceased workman Smt. Jayalakshmamma.

AWARD

The reference is accepted.

The 2nd Party is directed to pay Rs. 30,000/- (Rupees Thirty Thousand Only) to Sh. C.V Doraiswamy, Smt. Jayamma, Smt. Padmavathi and Smt. Nagamani being the children of the deceased 1st Party workman Smt. Jayalakshmamma within 2 months from the date of publication of the Award in the Official Gazette, failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th July, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1421.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 06/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08.2019 को प्राप्त हुआ था।

[सं. एल-29012/79/2007-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 2nd August, 2019

S.O. 1421.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 06/2008) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 02.08.2019.

[No. L-29012/79/2007-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH JULY 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 06/2008

I Party	II Party
Smt. L. Huchamma, W/o Lakke Gowda, Since deceased by LR's 1a) Sh. Lakke Gowda, S/o Late Sh. Kapini Gowda, 1b) Sh. Panduranga, S/o Sh. Lakke Gowda 1c) Smt. Shankaramma, D/o. Sh. Lakke Gowda, 1d) Sh. Thimme Gowda, S/o Sh. Lakke Gowda, 1e) Smt. Nagamani, D/o Sh. Lakke Gowda All are residining at Chavenahalli Village, Nagarnavile Post, Bagur Hobli, Channarayapatna Taluk Hassan Distt – 573131. Karnataka	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road, BANGALORE – 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. T K Veda Murthy

AWARD

The Central Government vide Order No.L-29012/79/2007-IR(M) dated 06.02.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the termination of Smt. L. Huchamma by the management of Mysore Minerals Limited w.e.f. 02.06.1998 is justified? If not, to what relief the workman is entitled to?"

1. The dispute was raised by the 1st Party workman Smt. L. Huchamma, who is now expired and represented by her Husband and 4 children - Class-I Legal heirs.

As per the claim averments the 1st Party joined the service of the 2nd Party on 20.11.1980 at its Mining Unit Thagadur Chromite Mines, Channarayapatna Taluk, Hassan District as a Mining worker. Her date of birth is 02.11.1945 as per the Horoscope maintained by her parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though she was entitled to continue in service up to 02.11.2004, on subjecting her for a medical examination 2nd Party refused employment on 02.06.1998. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. Her signature was obtained by the 2nd Party Officials on several applications. Several of her co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001(S-RES) came to be rejected on 12.06.2002. The Employee/ Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer / Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory

provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders Namely Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules under Rule/ Clause 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

That the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but she did not avail the opportunity extended to her. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, she has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. She was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate her from the services. She was given opportunity to prefer her appeal before Appellate Medical Board within 30 days, if she is aggrieved by the said report, but she did not avail the said opportunity. The 2nd Party Management relieved her from service on the ground of superannuation by settling her terminal benefits. She has received the terminal benefits and has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. The witness identified the Photostat copies of the documents confronted to him as Ex W-1 to Ex W-3 - they are the Photostat copies of the judgments of the Hon'ble High Court.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered the loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. Admittedly it was an enmasse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees who had approached the Hon'ble High Court.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The so-called Medical Certificate is not made available by the 2nd Party. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if she was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed her relationship, her claim cannot be sustained.

7. Neither the termination order nor the Medical Report is placed before this Court. The admission by the 2nd Party to the effect that, while joining service on 20.11.1980 she has given her date of birth as 02.11.1945 is the basis for this adjudication. In view of the said admission she has lost around 7 years of service, probably for the reason that the 2nd Party suffered financial loss and was in urgency to disembrace their workforce to mitigate their hardship. Thus, they resorted to Medical Examination of the workman. It appears that, only on the basis of clinical examination they declared the age of the workman. The 1st Party workman due to ignorance, illiteracy or for want of information did not challenge the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected by the 2nd Party.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if wanted to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F, G, H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating her service / premature superannuating w.e.f 02.06.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased. The Husband of the deceased workman has testified before the Tribunal that his deceased wife subsequent to her termination was not gainfully employed.

10. On one side there is the cause of the 1st Party workman who lost her avocation, in the mid-way of her career by curtailing her service probably by 7 years, on the other side there is evidentiary material that, she had accepted the terminal benefits and did not challenge her illegal removal for 10 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases she raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947. Moreover the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 30,000/-(Rupees Thirty Thousand Only) to Sh. Lakkegowda husband of the deceased workman Smt. L. Huchamma since the other claimants being the children of the deceased are majors and there is nothing suggesting that they are the dependents of Sh. Lakkegowda.

AWARD

The reference is accepted.

The 2nd Party is directed to pay Rs. 30,000/- (Rupees Thirty Thousand Only) to Sh. Lakkegowda husband of the deceased 1st Party workman Smt. L. Huchamma within 2 months from the date of publication of the Award in the Official Gazette, failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th July, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1422.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 35/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08.2019 को प्राप्त हुआ था।

[सं. एल-29012/35/2008-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 2nd August, 2019

S.O. 1422.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2008) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 02.08.2019.

[No. L-29012/35/2008-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH JULY 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 35/2008

I Party	II Party
Smt. Puttalakshmamma, W/o Sh. H. D. Ningegowda, Since Deceased by LR's	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road,

1a) Sh. H.D. Ninge Gowda, S/o Late. Dodde Gowda, 1b) Sh. Masti Gowda, S/o Sh. H.D. Ninge Gowda, 1c) Sh. Devaraju, S/o Sh. H.D. Ninge Gowda, 1d) Sh. Ninge Gowda, S/o Sh. H.D. Ninge Gowda, All are residing at Honnamaranahalli Village, Jamboor Post, Nuggehalli Hobli, Channarayapatna Taluk Hassan Distt – 573131.	BANGALORE – 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. T K Veda Murthy

AWARD

The Central Government vide Order No. L-29012/35/2008-IR(M) dated 02.04.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the termination of Smt. Puttalakshmamma by the management of Mysore Minerals Limited w.e.f. 27.05.1998 is justified? If not, to what relief the workman is entitled to?"

1. The dispute was raised by the 1st Party workman Smt. Puttalakshmamma, who is now expired and represented by her husband and 3 children - Class-I Legal heirs.

The claim of the 1st Party is, she joined the service of the 2nd Party on 18.12.1978 at its Mining Unit Thagadur Chromite Mines, Channarayapatna Taluk, Hassan District as a Mining worker. Her date of birth is 18.12.1949 as per the Horoscope maintained by her parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though she is entitled to continue in service up to 18.12.2008, on subjecting her for a medical examination 2nd Party refused employment on 27.05.1998. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. Her signature was obtained by the 2nd Party Officials on several applications. Several of her co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001(S-RES) came to be rejected on 12.06.2002. The Employee/ Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer / Mysore Minerals Limited.

2. It is the further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders Namely Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules under Rule/ Clause 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

That the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but she did not avail the opportunity extended to her. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, she has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. She was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate her from the services. She was given opportunity to prefer her appeal before Appellate Medical

Board within 30 days if she is aggrieved by the said report, but she did not avail the said opportunity. The 2nd Party Management relieved her from service on the ground of superannuation by settling her terminal benefits. She has received the terminal benefits and has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. Through him attested copy of the 'B Register' pertaining to the 1st Party was marked as Ex M-1. As per the said document her date of Birth is still maintained as 15.12.1948. The witness identified the Photostat copies of the documents confronted to him as Ex W-1 to Ex W-5 - they are the Photostat copies of the Membership Application Form of the 1st Party submitted to the Employees Welfare Trust, Termination order of the 1st Party dated 06.06.1998 and the judgments of the Hon'ble High Court.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered the loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. Had if the 1st Party continued in service up to her superannuation, she would have been in service up to 2008. Admittedly it was an enmasse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees who had approached the Hon'ble High Court.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The so-called Medical Certificate is not made available by the 2nd Party. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if she was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed her relationship, her claim cannot be sustained.

7. It is a point to be noted that the sole document for the Management i.e. the Photostat copy of the B register extract pertaining to the 1st Party even today indicates her date of birth as 15.12.1948 that being so, there is merit in the contention of the 1st Party, that without changing her age in the statutory records, her service was terminated. She has lost around 10 years of service, probably for the reason that the 2nd Party suffered financial loss and was in urgency to disembrace their workforce to mitigate their hardship. Thus, they resorted to Medical Examination of the workman. It is interesting to note that, only on the basis of clinical examination they declared the age of the workman. The 1st Party due to ignorance, illiteracy or for want of information might not have challenged the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected by the 2nd Party.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if wanted to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F, G, H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating her service / premature superannuating w.e.f 27.05.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased. The Husband of the deceased workman has testified before the Tribunal that his deceased wife subsequent to her termination was not gainfully employed.

10. On one side there is the cause of the 1st Party workman who lost her avocation, in the mid-way of her career by curtailing her service by 10 years, on the other side there is evidentiary material that, she had accepted the terminal benefits and did not challenge her illegal removal for 10 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases she raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947. Moreover the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 30,000/- (Rupees Thirty

Thousand Only) to Sh. H D Ninge Gowda husband of the deceased workman Smt. Puttalakshmamma since her all three sons were majors as on the date of her termination and were not dependent on the workman for their livelihood.

AWARD

The reference is accepted.

The 2nd Party is directed to pay Rs. 30,000/-(Rupees Thirty Thousand Only) to Sh. H.D Ninge Gowda, Husband of the deceased 1st Party workman Smt. Puttalakshmamma within 2 months from the date of publication of the Award in the Official Gazette failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th July, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1423.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 37/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08.2019 को प्राप्त हुआ था।

[सं. एल-29012/39/2008-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 2nd August, 2019

S.O. 1423.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2008) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 02.08.2019.

[No. L-29012/39/2008-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH JULY 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 37/2008

I Party	II Party
Smt. Tippamma, W/o Late Gaviappa, Since dead by LR's Sh. Gangadhar, S/o Late Gaviappa and Tippamma, Residing at 21/A, Taranagar Village & Post Sandur Taluk, Bellary District - 583 119.	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road, BANGALORE – 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. T K Veda Murthy

AWARD

The Central Government vide Order No.L-29012/39/2008-IR(M) dated 02.04.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of M/s Mysore Minerals Limited, Bangalore in removal from service w.e.f. 30.06.1998 in respect of Smt. Tippamma W/o Late Gaviappa is justified? If not, to what relief the workman is entitled to?"

1. The dispute was raised by the 1st Party workman Smt. Tippamma, who is now expired and represented by her son - Class-I Legal heir.

As per the claim averments the 1st Party joined the service of the 2nd Party on 16.06.1981 at its Mining Unit Thimmappanagudi Iron Ore Mines, Sandur Taluk, Bellary District as a Mining worker. Her date of birth is 16.06.1946 as per the Horoscope maintained by her parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though she was entitled to continue in service up to 16.06.2004, on subjecting her for a medical examination 2nd Party refused employment on 22.06.1998. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. Her signature was obtained by the 2nd Party Officials on several applications. Several of her co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001(S-RES) came to be rejected on 12.06.2002. The Employee / Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer / Mysore Minerals Limited. Due to inadvertence / typographical error she had filed the petition before the Regional Labour Commissioner Bellary her date of termination as 30.06.1998 instead of 22.06.1998. She had represented to the Secretary, Ministry of Labour, New Delhi and Regional Labour Commissioner, Bellary to verify and correct her date of termination and issue necessary corrigendum.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders Namely Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules under Rule/ Clause 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. Unfortunately till date no corrigendum order is received from the Government rectifying the date of termination. In the circumstances for practical purpose the reference order shall be understood to mean that 1st Party workman was refused employment from 22.06.1998. Interestingly without filing the counter statement 2nd Party has lead evidence through its Assistant Manager and he is fully cross examined. The 2nd Party has also cross examined the 1st Party workman on her death her son was examined as WW-2. This happened perhaps due to inadvertence by both the parties since the 9 reference cases in respect of the dispute raised by the similarly placed workman against the 2nd Party herein i.e. Mysore Minerals Limited were being posted on the same hearing dates and in all the cases the witness for the management was the same person. It is the elementary principle of civil adjudication that any evidence without the basis of pleading is *no evidence* in the eye of law.

4. The 1st Party in her affidavit evidence had reiterated her claim. During the cross examination, she had testified about getting her 4 documents marked as Ex W-1 to Ex W-4 during the cross examination of MW-1. Ex W-1 is the Photostat Copy of the Membership Application to the Provident Fund Scheme, Ex W-2 to Ex W-4 are the judgments of the Hon'ble High Court.

5. Since the 1st Party has not disputed the 2 documents produced on behalf of the Management marked as Ex M-1 and Ex M-2, there is no hindrance in considering both these documents. They are the Photostat copies of the 'B Register' extract and Medical Certificate in Form 'O'. Going by Ex M-1, the 2nd Party is still maintaining the date of birth of the 1st Party workman in their Statutory Record as 16.06.1946. As per the Medical Certificate in Form 'O'

Ex M-2, after recording that she appears to be 52 years they have rounded off figure 52 and wrote as 58 years. Further it is mentioned that, she is suffering from vision impairment and should be treated by an ophthalmologist etc.

6. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. Admittedly it was an enmasse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees who had approached the Hon'ble High Court.

7. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if she was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend in their written argument that having accepted the terminal benefits and having severed her relationship, her claim cannot be sustained.

8. The 1st Party has lost around 8 years of service, probably for the reason that the 2nd Party suffered financial loss and was in urgency to disembrace their workforce to mitigate their hardship. Thus, they resorted to Medical Examination of the workman. It appears that, only on the basis of clinical examination they declared the age of the workman. The 1st Party due to ignorance, illiteracy or for want of information did not challenge the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected by the 2nd Party.

9. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if wanted to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F, G, H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating her service / premature superannuating is neither justified nor legal.

10. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heir of the deceased. The son of the deceased workman has testified before the Tribunal that his deceased mother subsequent to her termination was not gainfully employed.

11. On one side there is the cause of the 1st Party workman who lost her avocation, in the mid-way of her career by curtailing her service probably by 8 years, on the other side there is evidentiary material that, she had accepted the terminal benefits and did not challenge her illegal removal for 10 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases she raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947. Moreover the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 15,000/- (Rupees Fifteen Thousand Only) to Sh. Gangadhar/ her son and sole legal heir of the deceased 1st Party workman Smt. Tippamma.

AWARD

The reference is accepted.

The 2nd Party is directed to pay Rs. 15,000/- (Rupees Fifteen Thousand Only) to Sh. Gangadhar son of the deceased 1st Party workman Smt. Tippamma within 2 months from the date of publication of the Award in the Official Gazette failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th July, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1424.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स विश्वेश्वरैया आयरन एंड स्टील प्लांट,सेल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 47/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.07.2019 को प्राप्त हुआ था।

[सं. एल-43011/7/2011-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 2nd August, 2019

S.O. 1424.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2011) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Visheveshwaraih Iron & Steel Plant, Sail and their workman, which was received by the Central Government on 25.07.2019.

[No. L-43011/7/2011-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 17TH JULY 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 47/2011

I Party	**II Party**
Sh. Honnaiah, General Secretary, Vishweshwaraiah Iron & Steel Plant Workers Association, New Town, Bhadravati - 577 301.	The Executive Director, Vishveshwaraih Iron & Steel Plant, SAIL, Bhadravati - 577 301.

Appearance

I Party : Self

II Party : Mr. H.N. Venkatesh

Authorised Representative

AWARD

The Central Government vide Order No. L-43011/7/2011/IR(M) dated 30.11.2011 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the punishment of demotion from Grade 10 to Grade 9 and fixing the pay at the maximum of Grade 9 is justified, appropriate to the misconduct of making false complaint by Sh. Ramakrishna? What is the appropriate punishment for the said misconduct and what are the reliefs the workman is entitled to?"**

1. The Union has espoused the cause of the 1st Party workman herein. The case of the workman is, he joined the 2nd Party in the year 1973 and with timely promotions reached the grade of S-X (Sr. Administrative Assistant Admn) on

30.06.2003; by virtue of punishment order dated 10.01.2009 he was demoted to the grade of S-IX w.e.f 10.01.2009; on attaining superannuation he is relieved from services w.e.f 10.04.2012.

2. The facts leading to his demotion is, he made written complaints dated 24.04.2003 and 08.06.2003 to the Chief Vigilance Office (CVO), SAIL, New Delhi and the Superintendent of Police, Mumbai respectively, alleging misuse of Hired Car by Branch Manager, Pune Branch of 2nd Party and irregularities in opening of Stock Yard at Pune. On Investigation CVO, SAIL did not find any merit in his complaint and advised the 1st Party vide Advisory memo dated 13.08.2004 to desist from making false allegations. The Vigilance Wing of the Ministry of Steel, Government of India on investigation did not find any merit in his complaint and vide letter dated 20.11.2006 advised the 2nd Party to take appropriate action against the workman. That resulted in initiation of Domestic Enquiry against the 1st Party workman; charge sheet dated 31.05.2007 was issued; the 1st Party submitted his explanation to the charge sheet on 14.06.2007, the Disciplinary Authority did not find his explanation satisfactory and appointed the Enquiry Officer and the Presenting Officer; after conducting the enquiry, Enquiry Officer submitted report dated 23.06.2008 holding the workman guilty of the misconduct. On procuring reply from the workman to the enquiry report the Disciplinary Authority passed the punishment order on 10.01.2009.

3. The 1st Party claims that, on coming to know that the SAIL-CMO was getting cash discount of 4% from the Travel Agents for booking Air Tickets, he made efforts and persuaded for more than 2 years to get the system implemented in SAIL-VISL, Bhadravati from January 1999. Due to his effort now the rate is revised to 4.5%. There used to be misuse of car engaged for company's work as well as by payment of excess amount. The 1st Party brought the same to the notice of Assistant General Manager Marketing, SAIL-VISL, Bhadravati in September 2001 and then to Executive Director, SAIL-VISL, Bhadravathi in October 2001 and December 2001 with copies to the Internal Audit department. Since no action was taken, he gave representation to the Executive Director, SAIL-VISL along with a detailed report and copy of the quotation of Rs. 15,000/- per month without garage to garage reading for a petrol driven car. Still, the very same agency was continued by paying more money than the market rates, without inviting Tenders causing financial loss to the company. Irregularity adopted in the Tender was brought to the notice of all the concerned including the CVC. But no action was taken to set right to initiate action against the culprits. The matter was brought to the notice of Director, Vigilance, Ministry of Steel, New Delhi. He was called to New Delhi for discussion and to furnish additional grounds if any. Though in the beginning there was some positive move to investigate the issue, finally they submitted a false Investigation Report declaring that the complaints are not based on facts and it is in utter violation of Vigilance Manual. He was issued charge sheet dated 31.05.2007 without specific charges; the enquiry was prejudicial to the 1st Party and was held in haphazard manner. Punishment Order was passed giving liberty to him to prefer appeal within 30 days. The Appellate Authority disposed off his appeal beyond permissible time without affording fair opportunity. He filed a review petition against the order of the Appellate Authority but, no action is taken on his review petition.

4. The 2nd Party counters the claim, that his conduct of filing false complaint is subversive of discipline and detrimental to the Industrial peace of the Organisation hence, Disciplinary Action was initiated. The Disciplinary Action was also required to maintain the discipline in the organisation. The complaints given by him to CVO-SAIL and Superintendent of Police, Mumbai turned out to be false. He was advised vide Advisory Memo dated 13.08.2004 to desist false allegation; he was in the habit of harassing his colleagues and superiors for no reason. He had deployed a Private Detective Agency to get a report convenient to him, against his Superior Officer viz the Branch Officer, Pune. The report of the Private Detective Agency engaged by the 1st Party turned out to be false, on enquiry by the Vigilance Department of the Company. On perusal of the reply submitted by the 1st Party workman to the enquiry report, the punishment order is passed. The Disciplinary Authority after going through the connected papers leading to the Enquiry Report of the Enquiry Officer and on giving opportunity to the 1st Party, agreed with the findings of the enquiry and imposed the punishment. The Chief Information Commissioner, New Delhi in one of his orders on the appeal filed by Sh. Ramakrishna has passed strictures against him that the workman herein is misusing the provisions of RTI Act for promotion of his personal interests at the cost of the Public resources and recommended for initiation of disciplinary proceedings. Hence, initiation of Disciplinary Action and imposition of punishment are in order.

5. The Domestic Enquiry held against the workman is upheld by this Tribunal vide order dated 30.01.2014.

Heard both parties on merits of the case.

6. The charge sheet dated 31.05.2007 issued to the workman read as follows:-

(1) It has been Observed That Sh. Ramakrishna, Emp. No. 600120, S-10 grade, presently working as Sr. Administrative Assistant in Hindi Cell, while working at VISL Branch Office Pune, had submitted written Complaints dated 24.04.2003 & 08.06.2003 to the CVO-SAIL claimed to irregularities on the following aspects:

(a) Hiring of Taxies by Pune Branch Office during 2003 - Complaint dated 24.04.2003

(b) Opening of Stock Yard at Tathawade, Pune during 2002-03 - Complaint dated 08.06.2003 annexed to Complaint under Sl. No. 1.

(2) These complaints were examined by the Management and have revealed that there were no merits in the issues mentioned in the complaints of Shri. Ramakrishna, Sr. Administrative Assistant.

(3) It has also been brought out that Shri. Ramakrishna, Sr. Administrative Assistant is in the habit of making regular multiple complaints to various agencies on frivolous grounds thus bringing down the Image of the Organisation in the Public, which is very serious matter.

(4) In the regard, Shri. Ramakrishna, Sr. Administrative Assistant has already been issued an Advisory Memo dated 13.08.2004 for making such serious false allegations.

(5) Despite, issue of an Advisory Memo dated 13.08.2004, Shri. Ramakrishna, Sr. Administrative Assistant had written to Steel Ministry again on the same subjects given in the Paragraph – 1.

(6) Further, such complaints of Shri. Ramakrishna, Sr. Administrative Assistant had warranted engagement of various management personnel into trivial details and unproductive jobs for making the detailed investigations of these complaints.

(7) The above acts of Shri. Ramakrishna, Sr. Administrative Assistant are highly subversive of discipline and good behaviour excepted from such a senior employee, constitutes grave misconduct as per Certified Standing Orders of the Company: No. 15(w)-Writing… Letters making false Charges.

(8) Therefore, Shri. Ramakrishna, Sr. Administrative Assistant is hereby directed to submit the written explanation, if any, to the undersigned with SEVEN days from the date of receipt of this Charge Sheet.

(9) In case, no written explanation is received from Shri. Ramakrishna, Sr. Administrative Assistant within the stipulated time indicated in the Paragraph-8, disciplinary action shall be initiated against Shri. Ramakrishna, Sr. Administrative Assistant for the above misconduct.

(10) Further, it may also be noted that failing which, it would be presumed that Shri. Ramakrishna, Sr. Administrative Assistant have no defense to offer and further action shall be taken as per Rules.

7. Senior Manager (Fin-SA&CE) was the first witness for the Management during the enquiry; he deposed to the effect that, on the complaints made by the 1st Party workman on the allegation on

i) Hiring of taxies by Pune Branch during 2003 vide his complaint dated 24.04.2003

ii) Opening of stockyard at Thathawade Pune during 2002-03 vide his complaint dated 08.06.2003, Investigation was conducted by the Authority of the stature of Corporate Vigilance. After detailed Investigation, Investigator gave the Investigation Report concluding that, *the allegations are not based on facts and the complaint is recommended for closure*. The witness further deposed that, 1st Party is in the habit of making various complaints to various agencies and no merit is found in issues mentioned by him in the complaint. The Corporate Vigilance addressed a letter dated 10.11.2006 to the Ministry of Steel in this regard and stated that most of the other complaints pertains to issue which are vague and non-verifiable and recommended to close the complaints. The Ministry of Steel vide its letter dated C-13019(19)2005-Vig addressed a letter to SAIL that, "after examination of the matter it has been decided to close the complaint. However, with regard to the alleged habit of the complainant to make regular multiple ill-founded complaints, you may consider taking appropriate action in the matter as warranted." The witness was thoroughly cross examined in six instalments.

8. The 1st Party gave his defence statement justifying his complaints, and reiterated his stand. To epitomize the same, he has handled more than one post without any monetary benefit. While working in Kolkata Branch Office, he effected lot of savings, he got discount of 4% being payable by the Travel Agent for booking Air Tickets passed on to the Company, the ACVO implemented his idea. From January 1999 to 2006-2007 a sum of Rs. 14,00,472/- is discounted. On his representation a circular dated 13.09.1997 was issued to avail the Guest House / Transit House Accommodation of the Company and other PSUs wherever available, for the Executives. His complaint has effected savings to the Company. While working at Pune Branch on noticing irregularities in engaging the same agency for providing car service to the Pune P.O. They used to pay excess amount than the market price which was in violation of Purchase / Contract Procedure updated in 2000, he brought the same to the notice of the AGM Marketing, with a copy the Senior Manager, IAD. But there was no response. He brought the said matter to the notice of the ED vide representation dated 31.10.2001 but no action was taken; he gave representation dated 20.02.2002 to CBI, Mumbai, CVO-SAIL, New Delhi, and ACVO, Bhadravati. This is in accordance with Vigilance Bulletin Oct.-Dec. 2002. For this he had collected quotations from the outsiders, the quotation collected by him was cheaper by Rs. 3,000/- per month; he had forwarded the same letter to the ED vide letter dated 11.03.2002. In spite of this, same agency continued from

01.04.2002 with the same terms and conditions and without calling any Tenders. Hence, he continued to follow up the issue with the sole intention of effecting savings for the Company. The Vigilance has not proposed any action on the concerned for having violated the procedure. For the first time in the year 2003 they initiated Tender process at Pune B.O, but the Tender was not in accordance with the procedure. For the financial year ending by April 2007 there is a saving to the extent of Rs. 1.44 lakhs for 2 years contract. The Investigating Officer ought to have been present during the enquiry for examination with regard to opening of Stockyard at Tathawade. Likewise, he had written a letter to Senior Manager, Vigilance, CMO-SAIL, Mumbai on 21.12.2002 and 05.02.2003 regarding opening of Stock Yard at Tathawade, as there was no response he wrote to CBI, Mumbai on 08.06.2003. During 2005 a Committee was constituted to examine the offer of M/s. SPL. The Committee recommended for tendering and action was also initiated for tendering. He made suggestion with bonafide intention in the interest of the company.

9. Placing reliance on the vigilance report and also communication received by the Ministry of Steel dated 31.05.2007 (recommending action against the 1st Party). The Enquiry Officer in his enquiry report held the 1st Party workman guilty of charges of 'writing..... letters making false charges'. During enquiry 1st Party had sought for examination of Investigating Officer of the Corporate Vigilance; same was rejected by the Enquiry Officer by assigning reasons. It was observed that *"during the proceedings he has not really contested the very comprehensive Investigation Report of the Corporate Vigilance for its veracity on the issue raised in the twin Complaints of the CSE. The CSE has not brought out any malafide intention on the Apex Investigation Body for having conducted detailed investigation into the matter and coming out with stringent indictment of the CSE.... and his habit of making ill founded multiple complaints to various agencies."* It is further observed at para 13 that, *"the whole process of going into the said twin complaints made by the CSE and they being found to be not based on fact, has spawned over about 4 years now invoking involvement of, needless to say, vast official machinery of the Organisation, both men and material. And in conclusion, the whole thing comes up as a cropper as been already seen. The Mental Harassment / Humiliation caused to the person(s) who have been directly or indirectly attributed with doubts on their integrity and competency in their official capacity, in the bargain cannot be even fathomed. Besides, raising of these issues before various external agencies by the CSE, the credibility of the whole organisation would have definitely suffered i.e., till the conclusion of the process of Investigation into the allegations levelled against it"*. Thus, Enquiry Officer recorded his findings holding the 1st Party guilty of the charges of 'writing....letters making false charges' as per SO No. 15(w) of the Certified Standing Orders of the Company as per the charge sheet No. Hindi/101/2007-08 dated 31.05.2007 issued to him.

10. The Disciplinary Authority in the body of its order expressed its satisfaction about affording reasonable opportunity to the workman to defend against the charges. Further held that the reply submitted by him to the enquiry report was not satisfactory and accepted the findings of the Enquiry Officer. Keeping in view the proven misconduct and the past records of the service, the punishment of major penalty of *Demotion to S-IX Grade fixing his basic pay at maximum of S-IX scale of pay i.e. at Rs. 9,471/- was ordered as per clause 16(1)(2)(b) read with S.O No. 15(W) B of the Certified Standing Order was imposed.*

11. On perusal of the enquiry records it emanates that, the scope of enquiry operated in a narrow sphere. The truthfulness or otherwise of the complaints was not for probe before the Enquiry Officer. The Enquiry Officer was not entrusted with the task of examining into the veracity of two complaints dated 24.04.2003 and 08.06.2003 which were found to be meritless during investigation conducted by the Highest Investigating Agency i.e. Corporate Vigilance. The 1st Party had admitted that he is the Author of those complaints which were sent to multiple agencies but had his own reasoning's in support of said complaints. He has also not challenged the Investigation Report before any legal forum. Wherefore it was not incumbent for the Management to examine the Investigating Officer as a witness during the enquiry. In violation of the Advisory memo given to him on 13.08.2004 he risked himself to write to the Ministry of Steel which also fired back. The consequences of the false complaint involved various management personnel's into trivial and unproductive jobs for investigation of the complaints. Since, his complaint is turned down as false, same amounts to grave misconduct as per the Certified Standing Order of the Company No. 15(w). The Enquiry Report flows from the undisputed facts. Looking at the gravity of the misconduct and its ramification, the punishment order of demotion to the previous Grade is justified and does not call for intervention, in exercise of the jurisdiction under section 11-A of the Industrial Dispute Act. Hence,

AWARD

The reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 17th July, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1425.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 58/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08.2019 को प्राप्त हुआ था।

[सं. एल-29012/38/2012-आईआर(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 2nd August, 2019

S.O. 1425.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 58/2012) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 02.08.2019.

[No. L-29012/38/2012-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 29TH JULY 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 58/2012

I Party	II Party
Sri Basavarajappa, II Divisional Clerk, Mysore Mineral Limited, Head Office, BANGALORE – 560 001.	The Managing Director, Mysore Mineral Limited, No. 39, M G Road, BANGALORE – 560 001.

Appearances

I Party : **K T Govinde Gowda,** Advocate

II Party : **K R Anand,** Advocate

1. The Government of India, Ministry of Labour vide order No. L-29012/38/2012-IR(M) dated 10.12.2012 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as "The Act") (14 of 1947) referred the following Industrial Dispute to this Tribunal for adjudication:

SCHEDULE

"Whether the action of the management of M/s. Mysore Minerals Limited, Bangalore in not granting parity in pay to Shri B. Basavarappa than his juniors Shri Y P Bhuvanesh and Shri Y M Yogananda is legal and justified? What relief the workman is entitled to?"

2. This is a dispute raised by the individual workman. On receipt of the order of reference notice was issued to both parties and they have appeared and filed their respective statement.

3. 2nd Party by way of an application is questioning the maintainability of the dispute which is not espoused by a Trade Union.

4. When the matter was set down to hear on the application on 25.07.2019, the 1st Party filed a Memo which reads as under :

> "The First Party respectfully pray that this Hon'ble Court may be pleased to permit him to withdraw the above case with liberty to file fresh case forum of law in the interest of justice"

5. In view of the Memo there is no claim by the 1st Party against the 2nd Party regarding the referred issue. Though in the Memo the workman has expressed his intention to reserve liberty to file fresh case, no order can be passed rejecting or approving his right to raise a new industrial dispute for the same cause of action.

6. However, when there is no claim against the 2nd Party by the 1st Party workman,

AWARD

Reference is Rejected

(Dictated to U D C, transcribed by him, corrected and signed by me on 29th July 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1426.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कार्यकारी निदेशक, भेल, रानीपुर, हरिद्वार और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या175/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.07.2019 को प्राप्त हुए थे ।

[सं. एल-42011/79/2012-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 2nd August, 2019

S.O. 1426.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 175/2012) of the Central Government Industrial Tribunal-cum-Labour Court -2, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation toThe Executive Director, BHEL, Ranipur, Haridwar & others, and their workmen which were received by the Central Government on 23.07.2019.

[No. L-42011/79/2012-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 175/2012

Date of Passing Award- 23rd May, 2019

Between:

1. General Secretary,
BHEL Mazdoor Kalyan Parishad,
129/III/I, BHEL,
Ranipur, Haridwar- 249403.

2. General Secretary,
BHEL Workers Union HEEP & CFFP,
25/III/I, BHEL,
Ranipur, Haridwar- 249403.

3. General Secreatary,
H.E. Mazdoor Union,
117/III/I, BHEL,
Ranipur, Haridwar-249403.

4. General Secreatary,
CFFPE Assocaiation,
219/III/VB, BHEL,
Ranipur, Haridwar- 249403.

5. General Secretary,
BHEL Workers Trade Union,
161/III/I, BHEL,
Ranipur, Haridwar-249403.

6. General Secretary,
CFFP Karamchari Sangh,
255/III/Sector-3, BHEL,
Ranipur, Haridwar-249403.

7. General Secretary,
BHEL Kamgar Union,
17/III/Sector-1, BHEL,
Ranipur, Haridwar-249403. …Workmen

Versus

The Executive Director,
BHEL,
Ranipur, Haridwar-249403.

Appearances:-

Shri O.P. Sharma, (A/R) For the Workmen

Shri Manish Mahlotra, (A/R) For the Management

AWARD

The Government of India in Ministry of Labour& Employment has referred the present dispute existing between employer i.e. the management of BHEL, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42011/79/2012-(IR(DU) dated 04.12.2012 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Haridwar unit of BHEL adopting a month of 30 days for computation of earned leave encashment instead of month of 26 days is unjustified? If so, to what relief the workmen are entitled to?''

In the claim statement filed by the General Secretary of B.H.E.L Kamgar Union it has been contended that as per the Corporate HR circular dated 01.09.2011 issued by B.H.E.L the management had introduced 30 days month instead of 26 days month for encashment of leave salary as a new practice and this change was made without the consent of the Trade Unions. The introduction of the new system was effected from 01.09.11 and amounts to change of service condition of the workmen. Though there was a provision for calling the workmen to exercise their option in this regard, the management B.H.E.L did not give opportunity to the workmen for exercise of option. The approach made by the union turned out futile. The B.H.E.L has an apex bilateral forum called Joint Committee represented by the Board of Directors and the Central Trade Union Leaders across the country. This forum looks into the benefit and interest of the workman.

This committee was not convened before introduction of the change. All the efforts made by the union through dialogue with the management failed. Hence, the Union approached the Labour Commissioner Dehradun were conciliation took place. But the management refused to withdraw the circular. Thus, the Appropriate Government referred the matter for adjudication.

Being noticed the management appeared and filed written statement denying the claim of the claimant. It has been stated that the change of this condition relating to leave encashment is not only applicable to B.H.E.L but all the public sector undertakings being issued by the Ministry of HR and circulated to heavy industries and public sector undertakings. Hence, in terms of section 7-B of the Id Act only a national tribunal has the jurisdiction to adjudicate such disputes. It has further been pleaded that B.H.E.L is a multi-locational government company with 15 manufacturing Units, offices at 25 locations all over the country and more than 100/- project sites. All the policies issues are formulated centrally in the corporate office for uniform implementation. This circular relating to leave encashment has been implemented at other places except the location in Dehradun. Thereby the management pleaded that the proceeding is not maintainable and liable to be dismissed.

On the rival pleadings following issues were framed for adjudication.

ISSUES

1. Whether the action of the management of Haridwar unit of BHEL adopting a month of 30 days of computation of earned leave encashment instead of month of 26 days is unjustified? If so its effect?

2. To what relief the workmen are entitled to and from which date? If so its effect?

When the matter was adjourned for evidence of the workman on 21.01.2016 on behalf of the claimants one witness namely Premchand filed affidavit evidence, tendered the same and exhibited certain documents which was marked in a series of WW1/1 to WW1/5. The witness was cross-examined in part on 11.08.2016. On the same day another witness Arjun Singh had also filed the evidence and tendered the same. But thereafter the proceeding suffered several adjournments for cross-examination of the witnesses by the management. Since the management was insisting for the production of the witnesses for cross-examination the Ld. A/R for the workman on 22.May 2019 gave a written application enclosing the letter written by him to the claimants. In the application filed by the Ld. A/R for claimant has informed that the claimants have lost interest in the matter and not responding. He also submitted that the witnesses cannot be produced for cross-examination.

Thus, the evidence of the WW1 and WW2 on record was expunged vide order dated 22 May 2019 for their non availability to face the cross-examination. On the same day the Ld. A/R for the management expressed his intention not to adduce any evidence. Hence, the evidence was closed, and argument was heard.

It is a principle of law that the pleadings of the party should be substantiated by oral or documentary evidence. In this case the pleadings of the claimants and the claim advanced there under have not been substantiated in any manner. Hence, the reference received from the Appropriate Government is liable to be dismissed for want of claim. Hence, ordered.

ORDER

The claim be and the same is dismissed and the reference is accordingly answered. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1427.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स रजिस्ट्रार, मणिपाल विश्वविद्यालय, माधवनगर, मणिपाल कर्नाटक, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 48/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.07.2019 को प्राप्त हुए थे।

[सं. एल-42012/30/2009-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 2nd August, 2019

S.O. 1427.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 48/2009) of the Central Government Industrial Tribunal-cum-Labour Court,Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, Manipal University, Madhavnagar, Manipal Karnataka & others, and their workmen which were received by the Central Government on 30.07.2019.

[No. L-42012/30/2009-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 12th JULY 2019

PRESENT : JUSTICE SMT. RATHNAKALA, Presiding Officer

C R No. 48/2009

I Party	**II Party**
The President, Manipal University Mazdoor Union, C/o BMS Office, Felix Pai Bazaar, MANGALORE – 575 001.	The Registrar, Manipal University, Madhavnagar, MANIPAL – 576 104. Karnataka.

Appearances

I Party : Shri K B Arasa, Advocate

II Party : Shri K S Bhat**,** Advocate

AWARD

1. The Central Government vide order No. L-42012/30/2009-IR(DU) dated 06.10.2009 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

SCHEDULE

"Whether the action of the management of the Registrar, Manipal University, in terminating the services of their workman Shri Chikkanna B .K. w.e.f. 29/12/2008 is legal and justified? If not, what relief the workman is entitled to?"

2. In pursuance of the reference of Order both parties appeared and filed their respective statement. On the rival pleadings touching the validity of the Domestic Enquiry a Preliminary Issue was raised. After a full fledge trial the issue is answered affirmatively in favour of the management. Thereafter 1st Party workman adduced evidence regarding his unemployment etc., and the matter stood posted for Arguments. At this stage a Memo signed by both parties and their learned counsel is filed in the Court Hall on 11.07.2019. Same reads as under :

"1. Whereas the 1st Party named above was employed as General Duty Worker at the establishment of 2nd Party and he was terminated from the service as per order dated 29.12.2008.

2. Whereas the 1st Party challenged the order of termination issued by the 2nd Party and the same is now pending for disposal before the Presiding Officer, Labour Court, Bangalore in case No. C R No. 48/2009.

3. Whereas during the pendency of the dispute the 1st Party approached the 2nd Party and requested to resolve the dispute amicably. Accordingly the 2nd Party has considered his request and had detail discussion with the 1st Party and finally both the parties have resolved the dispute in amicable manner with the following terms and conditions:

A. The 1st Party has informed that he does not require employment and second party has agreed to pay 1st Party in full and final settlement of all his claim i.e. a sum total of Rs. 9,00,000.00 relating to his period of termination. No other benefits are payable to the 1st Party. In furtherance of the same a sum of Rs. 4,50,000.00 has been paid today by way of Cheque No. 45462 payable at par at all branches of the ICICI Bank Limited India. It is agreed that balance sum of Rs. 4,50,000/- will be paid to I Party workmen within a period of one month from this date.

B. The 1st Party has accepted above offer made by the 2nd Party in full and final settlement of all his claims whatsoever and he does not press for any other claim or dues against 2nd Party.

C. In view of the above mutual agreement 1st Party agrees that 2nd Party shall not be liable to pay any further amounts in respect of statutory claims pertaining to Employees Provident Fund, Employees State Insurance Corporation and Gratuity under payment of gratuity, Bonus under Payment of Bonus Act for the period from date of termination. Further the 1st Party undertakes not to make any claims pertaining to the same.

4. Both the parties considered that above term and conditions are fair and reasonable under the circumstances and therefore they are acceptable to them.

5. Therefore, it is prayed that the above Reference be disposed off accordingly.''

3. In the open court hall 1st Party workman received a cheque for Rs. 4,50,000.00 drawn on ICICI Bank from 2nd Party on 11.07.2019. In view of the above development,

ORDER

The reference is disposed off in terms of the Joint Memo dated 11.07.2019. The 2nd Party is directed to pay Rs. 4,50,000.00 on or before 10.08.2019 to the 1st Party workman Sh. Chikkanna failing which the amount shall carry future interest @ 6% p.a. till the date of recovery, commencing from 10.08.2019.

(Dictated to U D C, transcribed by him, corrected and signed by me on 12th July 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1428.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, भारतीय बागवानी अनुसंधान संस्थान, बैंगलोर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 09/1991) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.07.2019 को प्राप्त हुआ था।

[सं. एल-42012/128/1990-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 2nd August, 2019

S.O.1428.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 09/1991) of the Central Government Industrial Tribunal-cum-Labour Court,Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Indian Institute of Horticultural Research, Bangalore & others, and their workmen which were received by the Central Government on 30.07.2019.

[No. L-42012/128/1990-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 17TH JULY 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR 09/1991

I Party	**II Party**
Sh. H. Anjanappa, S/o K. Hanumantharayanna, Iverakandapura, Hesargatta Lake Post, Bangalore North - 560 089.	The Director, Indian Institute of Horticultural Research , No. 25, Palace Orchards, Bangalore - 560 080.

Appearance

Advocate for I Party : Mr. Muralidhara

Advocate for II Party : Mr. B.A. Chandra Shekar

AWARD

The Central Government vide Order No. L-42012/128/90-IR(DU) dated 18.02.1991 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the management of Indian Institute of Horticultural Research is justified in discontinuing the services of Shri H. Anjanappa, casual labourer, w.e.f. 04.05.1984? If not, to what relief the concerned workman is entitled to?"**

1. The case of the 1st Party is, he joined the 2nd Party in Ward Department and he was posted to work as a Driver for the Power Tiller. He was on leave on medical grounds. Later, when he returned back, he was refused employment on 04.05.1984.

2. The Counter to the claim is, reference is made after a lapse of 7 years. The 2nd Party is a Research Institute and not an Industry. The 1st Party was a Casual Labourer who used to be engaged when there is work in the field, he is not a regular employee. He is not a Power Tiller Driver; he has not attended the work from 04.05.1984. Since, he was a casual worker question of granting leave or refusing leave does not arise. The refusal of employment does not amount to retrenchment.

3. This Tribunal passed Ex-parte Award on 27.04.2001 thereby, rejecting the reference. A application filed by him in Misc. No. 03/2001 with a prayer to set aside the Award dated 27.04.2001 and permit him to lead evidence was rejected by this Tribunal vide order dated 06.03.2003. He challenged the said order before the Hon'ble High Court in W.P No. 20567/2005. Vide order dated 07.08.2009, the Writ Petition was allowed. The Award dated 27.04.2001 and the order passed in Miscellaneous Petition No. 03/2001 were set aside, and the matter is restored for fresh disposal.

4. The 1st Party before commencing his evidence filed an application seeking certain documents from the 2nd Party and after the documents were produced. He filed his affidavit evidence and on an adjourned date he was cross examined. In the meantime, 2nd Party filed a memo questioning the jurisdiction of this Tribunal to adjudicate the matter, on the ground that the Central Government is not the Appropriate Government. From then till date the matter continued at the same stage, on the question of jurisdiction.

5. In support of their contention, the judgement of the Hon'ble High Court of Bombay reported in 2010-I-LLJ-150(Bom) in WP No. 1434/1997 dated 04.05.2009, DuryodhanHiramanIngole and Others vs Indian Council Agriculture Research, New Delhi and others is relied by the 2nd Party.

6. In the above matter the finding of the State Labour Court was to the effect that, the Appropriate Government in relation to Indian Council Agriculture Research (1st Respondent before it) and Research Centre (Respondent No.2) (Employer) was the State Government. Said finding was confirmed in revision before the Industrial Court and again by the Hon'ble High Court. From then onwards there is no change to the legal position, enunciated in the said judgment.

7. As per the pleadings of the 2nd Party, it is a Research Institute engaged in Research Work of various types of Fruits and Vegetables for the benefit of Agriculturists. It is the submission at the Bar that the 2nd Party is also a Unit/Part of Indian Council Agriculture Research for short ICAR. In the above noted judgment, the Hon'ble High Court of Bombay has dealt the issue elaborately as to who is the Appropriate Government in relation to ICAR. On a vast survey of the precedents (Far and against in identical situations) and also in the light of the Judgment of the Constitutional Bench of the Apex Court in the matter of Steel Authority of India and Others vs National Union Water Front Workers reported in 2001-II-LLJ-1087(SC), on counting upon on the fact that, ICAR is registered under the Societies Regulation Act the Hon'ble High Court accepted the contention that, "the provisions of financial support of the Central Government cannot lead to an inference that the Institution is run by or under the Central Government. While upholding the finding of the Labour Court it was observed "no function of Government of India is shown to have been given to ICAR or to Respondent No.2.

8. In the absence of anything to the contrary to the above legal position it is inevitable to hold at this length of time that the Central Government was not the Appropriate Government to refer the present Industrial Dispute between the parties for adjudication in exercise of its power under section 2(a) of the Industrial Dispute Act to this Tribunal.

9. In the above cited case, the Labour Court though had found that it had no jurisdiction, had recorded its finding on the merits of the case and had held that the complainants had proved that they were engaged as Agricultural Labourers and were illegally terminated and the Employer had failed to prove their case that, they were the employees of the Contractor. The Hon'ble High Court held that, the workmen before it were entitled for reliefs claimed, since the Award passed by the Labour Court was endorsed in revision by the Industrial Court. The concurrent findings so recorded was endorsed by the Hon'ble High Court and it was observed, "it would be improper and cruel to direct the parties to go back to the Trial Court and plead and prove the entitlement of petitioner for back wages for such a long time. Since, the petitioners are labourers and had been engaged as such, their survival through these 19 years shows that they must have been making a living likewise by working as labourers. Therefore, rather than granting them back wages it would be appropriate if each of them is directed to be paid a lump sum of Rs. 5,000/- in lieu of back wages".

10. Sh. MD for the 1st Party workman submits that, the Award passed by the Labour Court granting relief though it had no jurisdiction to adjudicate the dispute since approved by the Hon'ble High Court in this case also appropriate relief may be granted in favour of the workman.

11. The 1st Party workman is before this Tribunal since 1991, as the records indicate he was refused employment in the year 1984. He had approached the Conciliation Officer in the year 1989, on failure of the Conciliation the matter was referred to this Tribunal vide order dated 19.02.1991, he is a Senior Citizen and it is agonising that, after agitating for nearly 30 years he has to withdraw himself empty handed.

12. Both parties have adduced evidence. The 2nd Party has not disputed his identity. Neither of the parties have produced any documentary evidence in support of their claims-counter claim. The parties were before the Hon'ble High Court when the orders passed by this Tribunal rejecting the Miscellaneous petition was challenged by the 1st Party. It is only for the first time on 03.09.2013 issue of jurisdiction was raised. Still without stressing on the said issue 2nd Party lead evidence on 05.02.2014 and the sole witness was cross examined on 11.03.2014. Thereafter the matter went on without any progress, may be sometimes the vacancy of the Presiding Officer fell vacant intermittently.

13. It is the case of the 1st Party that he worked with the 2nd Party since 1976 at their Watch and Ward Division and was refused employment on the ground of his absence between 04.05.1982 to 06.05.1984. I hold that he was refused employment and the said refusal amounts to retrenchment without following procedure contemplated under section 25-F of the Industrial Dispute Act. The 2nd Party has not disputed the claim allegation that, on acquisition of the Agricultural land under the ownership of the 1st Party workman, he was employed as the Casual Labourer.

His case rests on the technical contention that he is illegally retrenched without retrenchment compensation, though he had worked continuously for 8 years.

14. The relief that he may expect from a forum having jurisdiction to adjudicate his dispute is, monetary compensation in par with the retrenchment compensation which he was entitled to. He is already aged 67 years, and has spent much of his potential years in agitating his cause but without any result. Since, jurisdiction question was raised after 12 years after the completion of the evidence of the 1st Party workman, this Tribunal is obliged at this juncture to

address the jurisdiction question only, and it is not in fitness of things to return findings on the merits of the case or mould relief as per his entitlement.

15. Still there is another fact which this tribunal cannot loose sight of. The jurisdiction question having been raised for the first time after much delay the hardship caused to the workman needs to be appropriately compensated by awarding cost. Under section 11(7) of the I.D Act this Court is enabled to award costs to a party before it. To reiterate the said provision;

> (7) '*subject to any rules made under this Act at the costs of, and incidental to, any proceeding before a Labour Court, Tribunal or National Tribunal shall be in the discretion of that Labour Court, Tribunal or National Tribunal and the Labour Court, Tribunal or National Tribunal, as the case may be, shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary direction for the purpose aforesaid and such costs may, on application made to the appropriate government by the person entitled, be recovered by that government in the same manner as an arrear of land revenue*.'

16. Taking holistic view of the matter in my considered opinion Rs. 30,000/- (Rupees Thirty Thousand Only) would be the appropriate cost which shall be payable by the 2nd Party to the 1st Party workman.

AWARD

The reference is returned, since this Tribunal has no jurisdiction to entertain the dispute. However, 2nd Party is directed to pay cost of Rs. 30,000/- (Rupees Thirty Thousand Only) to the 1st Party workman within 30 days from the date of publication of the Award in the official gazette, failing which the amount shall carry future interest at 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 17th July, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1429.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंध निदेशक, हिंदुस्तान फ्लुओकार्बन लिमिटेड, बशीरबाग, हैदराबाद और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, हैदराबाद के पंचाट (संदर्भ संख्या 250/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 1.08.2019 को प्राप्त हुआ था।

[सं. एल-42011/102/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 2nd August, 2019

S.O. 1429.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 250/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, Hindustan Flurocarbons Limited, Basheerbagh, Hyderabad & others, and their workmen which were received by the Central Government on 01.08.2019.

[No. L-42011/102/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan**,** Presiding Officer

Dated the 11th day of July, 2019

INDUSTRIAL DISPUTE No. 250/2014

Between :

The General Secretary,
Hindustan Flurocarbons Ltd., Casual Workers
Union, C/o M/s. Hindustan Flurocarbons Ltd.,
1402, Babukhan Estate, Basheerbagh,
Hyderabad – 500 001. … Petitioner

AND

The Managing Director,
M/s. Hindustan Flurocarbons Limited,
1402, Babukhan Estate, Basheerbagh,
Hyderabad – 500 001. …Respondent

Appearances:

For the Petitioner : M/s. A.K. Jayaprakash Rao, M.Govind & Venkatesh Dixit, Advocates

For the Respondent : None

AWARD

The Government of India, Ministry of Labour by its order No. L- 42011/102/2014-IR(DU) dated 27.11.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of M/s. Fluorocarbons Limited, Hyderabad by refusing to regularize 27 casual workers (as per annexure-II) is legal, fair and justified? If not, to what relief the concerned workmen are entitled to?"

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 250/2014 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows**:

The case of the Petitioner union is that, the members of the union are working continuously for more than 20-25 years under the Respondent management and are being treated as casual without regularization of their services. The Petitioner union made representation to the Respondent management as well as to the labour Department bringing to their notice about the above facts. On the basis of the representation made by the Petitioner union, the labour Department called for a joint meeting as well as conciliation. The Respondent management though attended the conciliation meeting, but refused to consider the request of the Petitioner union to regularise the service of 27 casual workmen whose names are annexed to the reference. The Petitioner union also submits that the Respondent management is governed by the provisions of the Industrial Disputes Act, 1947 and the V schedule of the Industrial Disputes Act is also applicable to the Respondent management wherein it was found that the action of the Respondent management amounts to unfair labour practice. The Petitioner union submits that the action of the Respondent's management employing the members of the Petitioner union as casuals, and continuing them for more than 20 to 25 years with the object of depriving the status and privileges of permanent workmen." The Petitioner union submits that the Respondent management in order to deprive the status of permanent workman was keeping the 27 casuals in its organization without regularizing their services. The Petitioner union further submits that inspiteof the representation of the union, the Respondent management did not regularise the service of the members of the Petitioner union in the reference made by the Government of India. The Petitioner union also submits that the action of the Respondent management is nothing but an act of unfair labour practice and victimisation. It is submitted that though there are vacancies and the members of the Petitioner union are being discharging the duties regularly and the Respondent management having extracted the work and keeping them only

as casuals would itself demonstrate the action of the Respondent management not regularizing the services of the 27 casuals is nothing but amounts to encouraging bounded labour system. The Petitioner union also submits that some of the casuals who were enrolled in the Employment Exchange and when they went to renew their employment cards, the same were refused on the ground that they are already employed with the Respondent management. It is further submitted that there are more than 80 permanent workmen working in the Respondent factory and 27 are casual labourers. The nature of work which is being done by the permanent workman, and the casuals are one and the same. It is stated that on account of continuous work the casuals are operating machineries and they have earned experience in handling the machines. The Petitioner union further submits that the casuals are being continued by exploiting and they were being paid less emoluments than the permanent workmen. Therefore, the action of the Respondent management is not only amount to unfair labour practice and is also discriminative. The Petitioner union also states that the Respondent management at the time of starting, the factory has taken lands from the casual employees namely, 1)Peddamallain, 2)Md. Buranmiya, 3) P. Krishna, 4) P. Narayana, 5) N. Jamla, 6) V. Ramulu, 7) R. Hobaiah with the assurance that they will be given permanent employment but till this date the above said employees were continued as casual without regularizing their services, which is illegal, unjust and contrary to law. The Petitioner union further submits that as per the Standing Orders the workmen can not be kept as casual for years together and all the 27 casuals who were working from more than 2 decades are entitled for regularization of their services and also entitled for all the consequential benefits. The action of the Respondent management in not regularising 27 casuals is illegal, unjust and contrary to the provisions of law and also amounts to unfair labour practice and victimisation. The Petitioner union submits to direct the Respondent to regularise the service of the members of the union by granting all the consequential benefits.

3. The Respondent management was noticed to answer the claim of the Petitioner union. But, inspite of service of notice the Respondent did not prefer to attend the court. Hence, the Respondent was set ex-parte vide order dated 21.12.2017 and subsequently the Petitioner union adduced evidence, and relied on three documents which have been marked as Exhts. W1 to W3.

4. I have already heard the Learned Counsel for the Petitioner union and perused the evidence adduced from the side of the Petitioner as well as the documents relied on by the Petitioner.

5. During the course of argument the Learned Counsel for the Petitioner union submitted that the members of the Petitioner union, 27 in number have worked under the Respondent organization for more than two decades. They have rendered service to the Respondent organization for a period of 20 to 25 years continuously, and still they are being treated as casuals, without regularization of their service by the Respondent management, after exploiting them. The job of the members of the Petitioner union are perennial in nature. They have earned experience in handling the machines and also even though they are discharging their duties like permanent employees of the Respondent management but they are being treated as casuals, and not being paid equal pay for the equal work, though the nature of work discharged by the casuals and the permanent employees are one and the same. The advocate for the Petitioner union contended that the action of the Respondent management in not regularising the services of 27 casuals amounts to bounded labour system. It is also contended that some of the casuals who were enrolled in the Employment Exchange, and when went to the Employment Exchange to renew their Employment cards, the same was refused on the ground that they are already employed with the Respondent management. Their names were deleted from the Employment Exchange. He further contended that the members of the Petitioner union are treated as casuals, and the Respondent management is exploiting them treating as casual and they were being paid less emoluments than the permanent employees. The action of the Respondent management amounts to unfair labour practice and also it is discriminatory. He also contended that, since the members of the Petitioner union are working for more than two decades under the Respondent management and are continued under the Respondent management, and as their work is of perennial nature, they should be regularized. Similarly, WW1 in his evidence fully supports averments made in the claim statement. The Respondent management did not prefer to challenge the claim of the Petitioner union. Therefore, the unchallenged testimony of WW1 coupled with Exhts.W1 to W3 and on consideration of the argument advanced from the side of the Petitioner union, it can safely be said that the action of the management of M/s Hindustan Fluorocarbons Limited, Hyderabad by refusing to regularize 27 casual workers is neither legal nor justified. The workmen are entitled to be regularized. Hence, the Respondent management is directed to regularise the services of 27 casual employees (as per the list enclosed) and grant all the consequential benefits to them within a period of four months from the date of receipt of the copy of the order, as per rules. Hence, order.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 11th day of July, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri M. Arjun	NIL

Documents marked for the Petitioner

Ex.W1: Original pay slips of workers (Pg. No.1 to 41)

Ex.W2: Photostat copies of Employment Exchange card (pg. No. 42 to 48)

Ex.W3: Photostat copies of certificate of land acquired by the government and given to the Respondent (Pg. No.49 to 53)

Documents marked for the Respondent

NIL

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1430.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, हिंदुस्तान एरोनॉटिक्स लिमिटेड बालनगर हैदराबाद और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, हैदराबाद के पंचाट (संदर्भ संख्या 59/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 1.08.2019 को प्राप्त हुए थे।

[सं. एल-14011/01/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 2nd August, 2019

S.O. 1430.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 59/2011) of The Central Government Industrial Tribunal-cum-Labour Court, Hyderabad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Hindustan Aeronautics Limited Balanagar Hyderabad & others, and their workmen which were received by the Central Government on 01.08.2019.

[No. L-14011/01/2011-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 17th day of July, 2019

INDUSTRIAL DISPUTE No. 59/2011

Between:

The General Secretary (B.N. Sudarshan),
Hindustan Aeronautics Workers Union (HAWU),
Qtr. No.B-5, Hindustan Aeronautics Ltd.,
Hyderabad – 500042. …Petitioner Union

AND

The General Manager,
M/s. Hindustan Aeronautics Limited,
Balanagar,
Hyderabad – 500042. …Respondent

Appearances:

For the Petitioner : Party in Person
For the Respondent : M/s. K. Srinivasa Murthy & V. Uma Devi, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-14011 /01/ 2011-IR(DU) dated 5.9.2011 referred the following dispute between the management of M/s Hindustan Aeronautics Limited and their workmen under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

"Whether the action of the Management of Hindustan Aeronautics Limited, Hyderabad in depriving the entitled monetary benefits mentioned in the charters of demands of (as annexed) as of the union to the workers is legal andjustified? What relief the concerned workers are entitled to?"

The reference is numbered in this Tribunal as I.D. No. 59/2011 and notices were issued to the parties concerned.

2. The authorized representative of the Petitioner union has filed claim statement and the Respondent also filed counter statement. The case is posted for Petitioner's evidence.

3. Inspite of repeated calls, the Petitioner union did not turn up. Several opportunities have been given to the Petitioner Union to attend the court to prosecute the case of the workmen, but there is no representation on behalf of the Petitioner union which clearly indicates that perhaps the dispute of the Petitioner union has already been settled and the Petitioner union has got no claim to raise against the Respondent. In the circumstances stated above, it is felt that the Petitioner union is not interested in pursuing the dispute. Hence, the case of the Petitioner Union is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P Phani Gowri, Personal Assistant and corrected by me on this the 17th day of July, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1431.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आयुक्त, सीमा शुल्क और केंद्रीय उत्पाद शुल्क विभाग, हैदराबाद और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, हैदराबाद के पंचाट (संदर्भ संख्या 04/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 1.08.2019 को प्राप्त हुए थे ।

[सं. एल-42012/47/2008-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 2nd August, 2019

S.O. 1431.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 04/2009) of The Central Government Industrial Tribunal-cum-Labour Court,Hyderabad, as shown in the Annexure, in the Industrial dispute between the employers in relation toThe Chief General Manager, Bharat Sanchar Nigam Ltd., Circle, Abids, The Commissioner, Customs & Central Excise Department, Hyderabad & others, and their workmen which were received by the Central Government on 01.08.2019.

[No. L-42012/47/2008-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 23rd day of July, 2019

INDUSTRIAL DISPUTE No. 4/2009

Between:

Sri S. Yadagiri and 11 others,
C/o Md. Akbar Ali,
H.No.9-3-104, Harizan Basti,
Hasmathet, Old Bawnpally,
Secunderabad – 500 009 …Petitioner

AND

The Commissioner,
Customs & Central Excise Department,
Hyderabad –I Commissionerate, Kendriya
Shulk Bhawan, Basheer Bagh,
Lalbahadoor Stadium Road,
Hyderabad. …Respondent

Appearances:

For the Petitioner : Sri William Burra, Advocate
For the Respondent : Sri G. Jaya Prakash Babu, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-42012 / 47/2008-IR(DU) dated 16.1.2009 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the Central Excise Department, Hyderabad –II Commissionerate, Hyderabad in terminating the services of S/Shri S. Yadagiri, B Naveen Kumar, S. Hari Kanth, D. Ram Chander, Aktar, S.Abdul Sattar, K. Ambala, G.Raju, T. Venkateshwarlu, Smt. K. Laxmi, Smt. N. Yadamma and Smt. B. Yadamma casual/contingent workers and subsequently engaging them as contract workers from 2004 is proper and justified? If not, to what relief the concerned workmen are entitled to?"

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 4/2009 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows**:

The case of the Petitioner in brief is that the Petitioner was appointed as a casual labour on 1.4.1998 in the office of the Commissioner of Central Excise, Hyderabad. The nature of duties performed by the Petitioner is cleaning, sweeping, gardening and other works, such as, serving water, coffee, tea to the officers at their seats. It is further submitted that the Petitioner worked as a casual labour from 1.4.1998 to 4.10.2004 on which date the services of the Petitioner were terminated. The above said termination is illegal, unjust, without jurisdiction against the provision of law and also against the principles of natural justice. The Petitioner furthersubmitted that the first Respondent has not given any notice of termination as required under section 25F of the Industrial Disputes Act, 1947. The Petitioner was also not paid one month wages in lieu of notice. The Petitioner further submitted that he was also not paid any retrenchment compensation as required under Sec.25F of the Industrial Disputes Act, 1947. The Petitioner has also not been paid gratuity as required under the provisions of Payment of Gratuity Act, 1972. It is also submitted that ever since the Petitioner was appointed as a casual labour on 1.4.1998, he worked continuously under the 2nd Respondent and thus, he worked for more than 240 days in each calendar year. Thus, the Petitioner is entitled to be continued in service. The termination of the Petitioner is illegal, unjust, void ab-initio, against the provisions of law and also against the principles of natural justice. The Petitioner further submitted that Respondent No.1 and 2 have engaged the 3rd Respondent as "outsourcing agency" and directed him to take the Petitioner on his rolls, to provide employment through 1st and 2nd Respondents. Therefore, the services of the Petitioner came to an end with effect from 4.10.2004. The Petitioner is now working under R3 under compulsion. The Petitioner also submitted that he worked as a casual labourer directly with 1st Respondent and 2ndRespondent from 1.4.1998 to 4.10.2004 i.e., more than 6 years and his termination is illegal and without offering terminal benefits. The engagement of the Petitioner under Respondent No.3 is a pretence, sham/caprice and camouflage contract to circumvent the provisions of law. The Hon'ble Apex Court as well as several High Courts including the Hon'ble High Court of A.P., and Telengana, Hyderabad have held that where it is established that the contract is sham, camouflage such employees are the employees of the Principal Employer from the date of such employment with the contractor as the contract itself is fictitious and void ab-initio. Therefore, the Petitioner submitted that he has ample evidence to place before this Tribunal that outsourcing of the Petitioner is not genuine. Since the Petitioner was working initially under the 1st Respondent and 2ndRespondent , they are liable to provide him employment. It is further submitted that when the Petitioner was terminated from service, the Petitioner along with others filed OA bearing No.1074/2004 before Hon'ble Central Administrative Tribunal, Hyderabad where their application was rejected. Again the Petitioner filed WP No.26293/2005 before the Hon'ble High Court of A.P., Hyderabad, but the Hon'ble High Court was pleased to pass an interim order directing the Respondents to maintain status quo. In view of the order of the Hon'ble High Court of A.P., Hyderabad the Petitioner and others continued their services as casual labourers directly with 1st Respondent and 2nd Respondent till the final disposal of the above WP i.e., on 13.10.2006. The Hon'ble High Court though set aside the order of the Hon'ble Central Administrative Tribunal, passed in OA No.1074/2004 directed the Petitioner to take other remedies as available to the Petitioner as per law. In view of the order of the Hon'ble High Court, the Petitioners took shelter before this Tribunal. It is stated that the Petitioner was continued in service with 1st Respondent and 2ndRespondent till 4.10.2004. Thereafter, the Petitioner's services were terminated, 3rd Respondent was directed to bring the casual labourers including the Petitioner under the contract agreement dated 4.10.2004 without disturbing the present status. The termination of the service of the Petitioner is void ab-initio, illegal, arbitrary, unjust against the provisions of Industrial Disputes Act, 1947 and also against the principles of natural justice. Therefore, the Petitioner has submitted to set aside the oral termination of the Petitioner from 4.10.2004 as illegal, arbitrary, contrary to the provisions of Industrial Disputes Act, 1947 and also against the principles of natural justice and declare that the termination of the services of the Petitioner without complying with Section 25 F would render the order of oral termination is void ab-initio entitling the Petitioner for continuation of service with full back wages and all other attendant benefits in the interest of justice.

3. The Respondents are noticed, but inspite of service of notice, the Respondents did not prefer to attend the court. Several opportunities were given to the Respondent to participate in the hearing of this dispute. But, the Respondent did not prefer to participate in the hearing. Ultimately, hearing of the case was taken up in absence of the Respondent.

4. During the course of hearing the Petitioner workman Sri Yadagiri has been examined himself as WW1 and also relied on 5 documents which have been marked as Ex.W1 to W5. The Respondent did not adduce any evidence nor advance any argument.

5. In view of the facts stated above, the points for determination are:

I. Whether the action of the Central Excise Department, Hyderabad –II Commissionerate, Hyderabad in terminating the services of S/Shri S. Yadagiri, B Naveen Kumar, S. Hari Kanth, D. Ram Chander, Aktar, S.AbdulSattar, K. Ambala, G.Raju, T. Venkateshwarlu, Smt. K. Laxmi, Smt. N. Yadamma and Smt. B. Yadamma casual/contingent workers and subsequently engaging them as contract workers from 2004 is proper and justified?

II. If not, to what relief the concerned workmen are entitled to?"

6. I have already heard the Learned Counsel appearing on behalf of the Petitioner.

7. Perused the evidence adduced on behalf of the Petitioner workman. The workman being examined as WW1 fully supports the averments made in his claim statement. The evidence of WW1 also finds support from the averments made by him in his claim statement as well as in his chief evidence affidavit. The unchallenged testimony of WW1 finds support from the averments made in Ex.W1 to W5. Therefore, the evidence of WW1 coupled with Ex.W1 to W5 well proves the case of the Petitioner. The Respondents are not come forward to challenge the claim of the Petitioner workman. Therefore, the unchallenged testimony of the Petitioner workman shows that the termination of the workman from service is illegal and unjustified.

Thus, Point No.I is answered accordingly.

8. **Point No. II**: In view of the fore gone discussion, it can safely be held that, the Petitioner is entitled to get the relief as prayed in the claim statement and as such, the reference is answered accordingly. Hence, order.

Thus, Point No.II is answered accordingly.

Result:

In the result the reference is answered as under:

The action of the Central Excise Department, Hyderabad –II Commissionerate, Hyderabad in terminating the services of S/Shri S. Yadagiri, B Naveen Kumar, S. Hari Kanth, D. Ram Chander, Aktar, S.AbdulSattar, K. Ambala, G.Raju, T. Venkateshwarlu, Smt. K. Laxmi, Smt. N. Yadamma and Smt. B. Yadamma casual/contingent workers and subsequently engaging them as contract workers from 2004 is neither proper nor justified and is hereby set aside. The Respondent is directed to reinstate Petitioner Sri S. Yadagiri into service and to regularize his services with back wages, continuity of service and give all consequential benefits .

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 23rd day of July, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
Sri S. Yadagiri	NIL

Documents marked for the Petitioner

Ex.W1: Photostat copy of information obtained under RTI Act, 2005 i/r of Petitioner vide proceedings dt.16.8.2011

Ex.W2: Photostat copy of information obtained under RTI Act, 2005 i/r of Petitioner vide proceedings dt. 27.4.2012

Ex.W3: Photostat copy of lr. dt. 6.5.2005 from SAO to AO of the Respondents

Ex.W4: Photostat copy of lr. dt. 16.4.2007 from PAO to AO of the Respondents

Ex.W5: Photostat copies of fully vouched contingent bills for 11/2001, 2/2002, 3/2002, 4/2002, 6/2002, 8/2002, 9/2002, 11/2002, 12/2002, 2/2003, 3/2003, 5/2003, 8/2003, 9/2003, 10/2003, 7/2004 and 10/2004

Documents marked for the Respondent

NIL

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1432.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंधक, ग्लोबल इनोवेस सॉल्यूशंस प्रा. लिमिटेड कोलकाता, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 27/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.07.2019 को प्राप्त हुए थे।

[सं. एल-42012/109/2015-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 2nd August, 2019

S.O. 1432.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to Manager, Global Innovsource Solutions Pvt. Ltd. Kolkata & others, and their workmen which were received by the Central Government on 18.07.2019.

[No. L-42012/109/2015-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 27 of 2015

Parties: Employers in relation to the management of M/s. Global Innovsource Solutions Pvt. Ltd.

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None
On behalf of the Workmen : None

Dated: 10th July, 2019 Industry:

AWARD

By Order No.L-42012/109/2015-IR(DU) dated 05.06.2015/11.06.2015 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of M/s. Orion Security Solutions is justified by terminating the service of Shri Ashis Kumar Das and is legal and/or justified? If not, what relief the workman are entitled?''

3. When the case was taken up for hearing today, none appeared for the parties concerned. It transpires from record that though this reference is pending in this Tribunal since 30.06.2015 and inspite of all the opportunities, neither the union has filed its statement of claim, nor the managements have filed its written statement to proceed further with the case.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of termination of the workmen concerned as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

5. Therefore, the reference is disposed of accordingly.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 10th July, 2019

नई दिल्ली, 2 अगस्त, 2019

का.आ. 1433.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैनेजर, कोलकाता टेलीफोन, कोलकाता, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 04/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 31.07.2019 को प्राप्त हुए थे।

[सं. एल-40011/08/2016-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 2nd August, 2019

S.O. 1433.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 04/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation toThe Manager, Kolkata Telephones, Kolkata & others, and their workmen which were received by the Central Government on 31.07.2019.

[No. L-40011/08/2016-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 04 of 2017

Parties : Employers in relation to the management of Kolkata Telephones, Telephone Bhawan

AND

Their workmen

Present : Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : None

Dated: 25th July, 2019 Industry:

AWARD

By Order No.L-40011/08/2016-IR(DU) dated 15.09.2016 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of BSNL, Calcutta Telephones in not granting temporary status to seven casual labours namely S/Sri (1) Shyamal Sweli,(2) Abhijit Biswas, (3) Nilkanta Das, (4) Nikhil Kr. Mondal, (5) Shyam Sunder Ghosh, (6) Ganesh Chandra Saha and (7) Namita Biswas are legal and justified? If not to what relief the concerned casual labourers are entitled to?"

3. When the case was taken up for hearing today, none appeared for the parties concerned. It transpires from record that though this reference is pending in this Tribunal since 30.09.2016 and inspite of all the opportunities, neither the union has filed its statement of claim, nor the managements have filed its written statement to proceed further with the case. In fact, no one ever appeared on behalf of the union/workmen to pursue its case before the Tribunal.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of non-granting temporary status of the seven workmen concerned as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

5. Therefore, the reference is disposed of accordingly.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 25th July, 2019

नई दिल्ली, 5 अगस्त, 2019

का.आ. 1434.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 18/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2019 को प्राप्त हुआ था।

[सं. एल–22012/56/2012–आईआर (सीएम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th August, 2019

S.O. 1434.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2012*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 01.08.2019.

[No. L-22012/56/2012–IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 25th day of July, 2019

INDUSTRIAL DISPUTE No. 18/2012

Between:

The State General Secretary, (Sri Revelli Rajaram)
Singareni Coal Mines Labour Union (INTUC),
INTUC Bhavan, Godavarikhani – 505 209.
Karimnagar Distt (A.P.) …Petitioner union

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-I Area,
Godavarikhani, Karimnagar Distt.-505209. …Respondent

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Representative

AWARD

This is a reference issued by the Government of India, Ministry of Labour and Employment, New Delhi vide order No. L-22012/56/2012-IR(CM-II) dated 26.4.2012 whereunder this Tribunal is required to adjudicate the dispute i.e.,

> *"Whether the action of the management General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani in terminating the services Sri Nalini Rajkumar, Ex-Badli Filler, GDK-7 LEP, Ramagundam-I Area, Godavarikhani with effect from 14.2.2007 is fair and justified? To what relief the concerned workman is entitled to?''*

After receiving the above said reference this Tribunal registered the case as I D No. 18/2012 and issued notices to both the parties and secured their presence.

2. <u>The workman filed his claim statement with the averments in brief as follows:</u>

The workman Sri Naini Rajkumar, was initially appointed as a Badli Filler on 23.12.2002. He was regular to his duties and performing his duties upto the satisfaction of all his superiors. While so, he could not be regular to his duties on account of suicides committed by his younger sister and his younger brother in the years 2004 and 2005 respectively, the Petitioner was unable to attend duties regularly, due to severe depression, for which one charge sheet was issue to him and one enquiry was ordered to be conducted. Subsequently, one ex-parte inquiry was conducted and the Workman was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved, and basing on the erroneous findings of the Enquiry Officer, the Workman was dismissed from service through office order dated 11.2.2007 w.e.f. 14.2.2007. It is stated that the workman was not aware of either issuance of the charge sheet or conducting of any enquiry. The workman is not aware of the enquiry notice published in daily news paper Andhra Jyothi, as he was undergoing great mental trauma at his native place due to the above unfortunate events. Thereafter, the workman was issued with a show cause notice dated 23.11.2006, to which he has submitted his explanation dated 26.12.2006 explaining all the reasons for which he could not be regular to his duties during the year 2005. As a result of his dismissal from service the concerned workman and his family members have been facing lot of hardships and starvation. Till date he was not gainfully employed elsewhere from the date of his dismissal. The Workman has rendered 4(four) years of continuous service in the Respondent's management. The Workman approached the Respondent to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Workman was constrained to approach this Tribunal to declare the impugned order issued by the Respondent is illegal and arbitrary and to set aside the same and consequently to direct the Respondent to reinstate the Workman into service duly granting all other attendant benefits such as continuity of service, and back wages etc..

3. The Respondent appeared through his advocate and did not like to file counter though several opportunities were given to him and as such, the Respondent was set ex-parte vide order dated 20.3.2017.

4. In view of the memo filed by the counsel for the Petitioner Union, stating therein, that the Petitioner Union is not interested in prosecuting the issue of legality and validity of the domestic enquiry, the domestic enquiry conducted by the Respondents is held as legal and valid vide order dated 20.3.2017.

5. I have already heard the Learned Counsel appearing on behalf of the Petitioner union under Sec.11(A) of the Industrial Disputes Act, 1947, in support of the claim made by the Petitioner.

6. <u>In view of the above facts, the points for determination are</u>:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Naini Rajkumar is legal and justified?

II. Whether the Workman is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **Point No.I**: During the course of argument, the Learned Counsel appearing on behalf of the Workman argued that due to suicides of his younger sister and younger brother respectively, the Workman could not be able to attend his duty sincerely. Even in his show cause the Workman has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Workman. When the Workman has taken a stand that due to his illness and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing capital punishment. The authority has not considered any of the submissions of the Workman, and has given capital punishment to the Workman when several modes of punishment are enumerated in the company's Standing Orders.

8. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to suicides of his younger sister and younger brother, and subsequent depressive conditions, the Workman could not be able to be regular in his duty. Further, when the Workman remained absent in his duties a proceeding was initiated against him for his absenteeism followed by an ex-parte enquiry. In the ex-parte enquiry, the charges levelled against the Workman were proved. For this, capital punishment was imposed on the workman. After dismissal of service, the Workman has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 31 years, he is now aged about 38 years and is searching ways and means to provide bread and butter to his family members. When the Workman being an able bodied and energetic man and has already realised his mistake and is coming forward to work under the Respondent, atleast one chance should be given to him for reinstatement into service at the end of his service period. Admittedly several modes of punishment are enumerated in company's Standing Orders. Though the Workman is a first offender and has worked for about 4 (four) years under the Respondent, while imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent management for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Naini Rajkumar is not legal and justified.

Thus, Point No.I is answered accordingly.

9. Point Nos. II & III: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Naini Rajkumar is not legal and justified. After dismissal of service as stated earlier, when the Workman has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Workman has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Workman should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case, the Workman has not come to the court soon after his dismissal of service. Therefore, in the opinion of this Tribunal the Workman is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

RESULT:

In the result, the action of the General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area., Godavarikhani in terminating the services of Sri Naini Rajkumar, Ex-Badli Filler, GDK-7 LEP, Ramagundam-I area, Godavarikhani with effect from 14.2.2007 is not justified and is hereby set aside. It is ordered that the workman be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman cannot claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman shall not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry and in the event of completion of one year of probation satisfactorily, the workman is to continue in service till the age of attaining superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be

applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for his appointment afresh and as such the reference is answered accordingly. So also the, award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 25th day of July, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 5 अगस्त, 2019

का.आ. 1435.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या एलसी 30/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2019 को प्राप्त हुआ था।

[सं. एल–22013/01/2019–आईआर (सीएम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th August, 2019

S.O. 1435.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LC 30/2010*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 01.08.2019.

[No. L-22013/01/2019–IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 25th day of June, 2019

INDUSTRIAL DISPUTE L.C.No. 30/2010

Between:
Sri K. Praveen Kumar,
S/o Rajaratnam,
R/o Qr.No.SD-201, Naspur Colony,
CCC Post, Mancherial Mandal,
Adilabad District – 504302. …Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Area, Adilabad District. … Respondent

Appearances:

For the Petitioner : M/s. A.K. Jayaprakash Rao, P. Sudha, M. Govind & Venkatesh Dixit, Advocates

For the Respondent : Sri S.M. Subhani, Advocates

AWARD

Sri K. Praveen Kumar who worked as Badli Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. MMR/PER/D/072/6405 dated 9.12.2007 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

The Petitioner was initially appointed as Badli Filler in the year 1999 on compassionate appointment. The Petitioner was regular to his duties and performing his duties upto the satisfaction of all his superiors. While the matters stood thus, one charge sheet was issued to the Petitioner by the Respondents alleging that the Petitioner absented for duty during the year 2005, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service. It is stated that during the course of the enquiry the Petitioner has categorically stated about his inability to perform his duties regularly during the above said period as it was only on account of his ill-health, i.e., frequently felling ill due to head ache and back pain and knee pain. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents' management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered 8 years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order dated9.12.2007 w.e.f. 14.12.2007 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 25.12.1999 as Badli Filler on compassionate ground. During the year 2007, he was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the dates fixed for the enquiry fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, he submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondents were constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. The domestic enquiry conducted by the Respondents is held as legal and valid vide order dated 16.6.2017.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri K. Praveen Kumar is legal and justified?

II. Whether the Petitioner is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **Point No. I**: During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to his illness, the Petitioner could not be able to attend his duty sincerely. Even in his show cause the Petitioner has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. The authority has not considered any of the submissions of the Petitioner, and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness, and other family problems, the Petitioner could not be able to be regular in his duty, the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 30 years, he is now aged about 39 years and is searching ways and means to provide bread and butter to his family members. When the Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to work under the Respondents, atleast one chance should be given to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. Though the Petitioner is a first offender but he has worked for about 8 years under the Respondent. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri K. Praveen Kumar is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri K. Praveen Kumar is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But in this case, the Petitioner has not come to the court soon after his dismissal of service. Therefore, in the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

Proceeding No. MMR/PER/D/072/6405 dated 9.12.2007 issued by Respondent Company is declared as illegal and is hereby set aside. It is ordered that the workman Sri K. Praveen Kumar be taken into service as a fresh employee i.e., Badli Filler on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry, and in case the workman completes the one year probation period successfully he will continue in service till the age of his superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of

appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 25th day of June, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 5 अगस्त, 2019

का.आ. 1436.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या–एलसी 34/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2019 को प्राप्त हुआ था।

[सं. एल–22013/01/2019–आईआर (सीएम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th August, 2019

S.O. 1436.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LC 34/2010) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 01.08.2019.

[No. L-22013/01/2019–IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 17th day of July, 2019

INDUSTRIAL DISPUTE L.C.No.34/2010

Between:

Sri Enagandula Srinivas,
S/o Enagandula Mallesham
C/o Smt. A. Sarojana,
Advocate, Flat No.G7,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad …Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Bellampalli Area, Bellampalli.
Adilabad District.

2. The Superintendent of Mines,
M/s. Singareni Collieries Company Ltd.,
Goleti-1 Incline, Bellampally,
Adilabad District.

...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Sri S.M. Subhani, Advocate

AWARD

Sri Enagandula Srinivas who worked as Badli Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. BPA/PER/129/3210 dated 21/23-11/2007 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

The Petitioner was appointed as aBadli filler on 16.11.2005 and from the date of appointment, he was regular to his duties till the year 2005. During the year 2006 the Petitioner suffered with infective Hepatitis + Jaundice and unable to attend the duties regularly. While the matters stood thus, one charge sheet dated 20.4.2007 was issued to the Petitioner by the Respondents alleging that the Petitioner absented for duty during the year 2006, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service vide order dated 21/23.11.2007. It is stated that during the course of the enquiry the Petitioner has categorically stated about his inability to perform his duties regularly during the above said period as it was only on account of his ill-health. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents' management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered more than 2 years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order dated 21/23.11.2007 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 17.11.2005 as Badli Filler. During the year 2007, he was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the dates fixed for the enquiry fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, he submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondents were constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the counsel for the Petitioner that the Petitioner does not want to contest the legality and validity of the domestic enquiry conducted in the present case, the domestic enquiry conducted by the Respondents is held as legal and valid vide order dated 23.4.2019.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Enagandula Srinivas is legal and justified?

II. Whether the Petitioner is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **Point No. I**: During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to illness, the Petitioner could not be able to attend his duty sincerely. Even in his show cause the Petitioner has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing a capital punishment. The authority has not considered any of the submissions of the Petitioner, and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness, and other family problems, the Petitioner could not be able to be regular in his duty, the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 28 years, he is now aged about 37 years and is searching ways and means to provide bread and butter to his family members. When the Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to work under the Respondents, atleast one chance should be given to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. The Petitioner is a first offender but has worked for about 2 years under the Respondent. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Enagandula Srinivas is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Enagandula Srinivas is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But in this case, the Petitioner has not come to the court soon after his dismissal of service. Therefore, in the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

Proceeding No. BPA/PER/129/3210 dated 21/23-11/2007 issued by the Respondent Company is declared as illegal and is hereby set aside. It is ordered that the workman Sri Enagandula Srinivas be taken into service as a fresh employee i.e., Badli filler on initial basic pay without back wages and continuity of service, subject to medical fitness by the company

Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry, and in case the workman completes the one year probation period successfully he will continue in service till the age of his superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 17th day of July, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 5 अगस्त, 2019

का.आ. 1437.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या–एल सी 56/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2019 को प्राप्त हुआ था।

[सं. एल–22013/01/2019–आईआर (सीएम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th August, 2019

S.O. 1437.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LC 56/2010*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 01.08.2019.

[No. L-22013/01/2019–IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 25th day of June, 2019

INDUSTRIAL DISPUTE L.C.No. 56/2010

Between:

Sri Oram Ushanna,
S/o Bheemaiah,
C/o Smt. A. Sarojana,
Advocate, Flat No.G7,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad … Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Srirampur Area, Srirampur, Adilabad District.

2. The Superintendent of Mines,
M/s. Singareni Collieries Company Ltd.,
RK-5 Inlcine, Srirampur Area,
Srirampur, Adilabad District. …Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. S.M. Subhani & T. Padmaja, Advocates

AWARD

Sri Oram Ushanna who worked as Coal Filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. P/RKP/16/98/1768 dated 11.7.1998 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

The Petitioner was initially appointed as Badli Filler in the year 1992 and later confirmed as Coal Filler in the year 1994. The Petitioner was regular to his duties and performing his duties upto the satisfaction of all his superiors, but during the year 1997, the Petitioner suffered with ill-health and other personal problems due to which he could not be regular to his duties during the year 1997. While the matters stood thus, one charge sheet dated 18.2.1998 was issued to the Petitioner by the Respondents alleging that the Petitioner absented for duty during the year 1997, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service vide order dated 11.7.1998. It is stated that during the course of the enquiry the Petitioner has categorically stated about his inability to perform his duties regularly during the above said period as it was only on account of his ill-health. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents' management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered 6 years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach

this Tribunal to declare the impugned order dated 11.7.1998 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 13.8.1992. During the year 1998, he was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the dates fixed for the enquiry fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, he submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondents were constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. The domestic enquiry conducted by the Respondents is held as legal and valid vide order dated 16.6.2017.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Oram Ushanna is legal and justified?

II. Whether the Petitioner is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **Point No.I**: During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to his illness, the Petitioner could not be able to attend his duty sincerely. Even in his show cause the Petitioner has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case liberally while imposing punishment. The authority has not considered any of the submissions of the Petitioner, and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness, and other family problems, the Petitioner could not be able to be regular in his duty, the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 38 years, he is now aged about 47 years and is searching ways and means to provide bread and butter to his family members. When the Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to work under the Respondents, atleast one chance should be given to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. Though the Petitioner is not a first offender but has worked for about 6 years under the Respondent. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Oram Ushanna is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Oram Ushanna is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But in this case, the Petitioner has not come to the court soon after his dismissal of service. Therefore, in the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

Proceeding No. P/RKP/16/98/1768 dated 11.7.1998 issued by the Respondent Company is declared as illegal and is hereby set aside. It is ordered that the workman Sri Oram Ushanna be taken into service as a fresh employee i.e., a Badli Filler on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry, and in case the workman completes the one year probation period successfully he will continue in service till the age of his superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 25th day of June, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 5 अगस्त, 2019

का.आ. 1438.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या–एलसी 197/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.08.2019 को प्राप्त हुआ था।

[सं. एल–22013/01/2019–आईआर (सीएम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th August, 2019

S.O. 1438.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LC 197/2004*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 01.08.2019.

[No. L-22013/01/2019–IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 10th day of July, 2019

INDUSTRIAL DISPUTE L.C.No. 197/2004

Between:

Sri J. Rajaiah,
S/o Ashalu,
C/o Smt. A. Sarojana, Advocate,
Flat No. G7, Ground Floor,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad. …Petitioner

AND

1. The Chairman & Managing Director,
M/s. Singareni Collieries Company Ltd.,
Kothagudem.
Khammam District.

2. The Director (Operations)
M/s. Singareni Collieries Company Ltd.,
Kothagudem, Khammam District. ...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

Sri J. Rajaiah, the Petitioner workman who worked as a clerk in the Respondents' management (who will be referred to as workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the impugned order No.P.10/4202/IR/1097, dated 10.5.2001 issued by the Respondents as illegal, arbitrary, violative of principles of natural justice and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

The Petitioner was appointed as a clerk Gr.II in the 1st Respondent's company on 12.7.93 and since then the Petitioner used to discharge his duties upto the satisfaction of his superior officers and colleagues. While the matters stood thus, on 23.4.1998 he was issued charge sheet alleging certain discrepancies and variances. The above charge sheet was issued basing on the alleged report submitted by the CA(IA GDK vide Lr. No. IA/GDK/F5/98/558 dated 14.7.1998 and IA/GDK/FI/98/554 dated 20/21.7.98. Thereafter a routine and mechanical enquiry was conducted wherein the Petitioner

was not given any opportunity much less valid in nature to defend his case. From the beginning of the enquiry the Enquiry Officer and Presenting Officer were with a pre-determined notion, as if, the Petitioner was guilty of the charges. Basing on such lop-sided enquiry, the Enquiry Officer held the charges alleged against the Petitioner are proved. Accordingly, show cause notice dated 10.11.2001 was issued and the Petitioner submitted his explanation. Unfortunately, without considering the submission made by the Petitioner he was dismissed from service vide proceeding dated 11.5.2001. Aggrieved by the above order the Petitioner filed appeal before the first Respondent who also rejected the same. Having left with no other alternative remedy the Petitioner has approached this court for redressal. It is further submitted that the action of the Respondents in dismissing the Petitioner from service is wholly illegal, arbitrary and violative of the principles of natural justice. The Petitioner further submitted that the Enquiry Officer, Presenting Officer and the Respondents proceeded with pre-conceived notion as if the Petitioner is guilty of the charges. Issuance of charge sheet, conducting the formal enquiry, was in fact treated as a formality. Before commencement of the enquiry, the Enquiry Officer has not explained the procedure of enquiry so as to enable the Petitioner to participate in the enquiry effectively. Unfortunately, the procedure of the enquiry was not explained resulting in issuance of impugned order of dismissal. Had the Enquiry Officer explained the procedure of enquiry, enabling the Petitioner to understand the procedure of enquiry and participating the enquiry effectively, issuance of the impugned order could have been avoided. Even though charge sheet was issued basing on the alleged representations submitted by the Audit Department and even during the course of the enquiry the charges were substantiated and held to be proved by the Enquiry Officer solely basing on those reports of audit. Those reports were not furnished to the Petitioner dither before or during the course of the enquiry. But basing on the reports obtained behind the back of the Petitioner, the Enquiry Officer held the charges as proved and also basing on those findings of the Enquiry Officer, the impugned order of dismissal was issued. Though the Petitioner requested the Enquiry Officer to permit him to be assisted by a Defence Assistant during the course of the enquiry, Sri. M. Babu Rao was permitted to sit as an observer and he was not permitted to assist the Petitioner during the course of enquiry. As a result the very purpose of permitting the delinquent employee to be assisted a defence assistant got vitiated. The pre-determination of Enquiry Officer can be seen from the proceedings that even though MW1 and MW2 refused to answer the relevant questions posed by the Petitioner during the course of their cross examination the very purpose of giving opportunity of cross examination becomes an empty formality. It was the duty of the Enquiry Officer to see that the witnesses should answer the questions posed during the course of cross examination. The Enquiry Officer has to act and behave like a Judge unbiasedly. But in the instant case, through the management witnesses whenever they felt inconvenient, evaded and avoided to answer the questions posed by the Petitioner, the Enquiry Officer acted like a mute spectator, as if he was with a pre-conceived notion, and as if the Petitioner is guilty of the charges. It is also stated that though the management witnesses of the Enquiry Officer relied upon the circular dated 16.1.96 to substantiate the charges alleged against the Petitioner, the said circular was neither shown nor supplied either before or during the course of the enquiry. But exclusively relying upon the circular dated 16.1.96 the charges were held proved against the Petitioner. The Enquiry Officer grossly erred in coming to a conclusion that the circular dated 16.1.96 fixes the responsibility on canteen clerk, whereas it was not so. The Petitioner being a clerk of welfare section, has been looking after the canteen woks in addition to his routine work, that too, basing on the day to day instructions of the welfare officer. The circular dated 16.1.96 refers to the incharge of canteen but the canteen clerk, at any stretch of imagination, may not be treated as incharge of canteen. The Enquiry Officer and the Respondents ought to have seen that, the procedure of free supply of canteen preparation was in vogue. But without taking the above aspect into consideration, the Enquiry Officer held the charges as proved and the Respondents mechanically followed the same. The Enquiry Officer as well as the Respondents ought to have seen that there was no regular audit once in 4 months of the canteen as per rule 71 of mines rules. Had really there was any audit, there could not been any scope for such discrepancies. The Enquiry Officer and the Respondents ought to have seen that one key of the canteen would be available with the welfare officer and there were many other persons who deal with the canteen material, such as cook, vendor, and cleaner. Even those employees also will have access to the stores of the canteen. Therefore, finding of the Enquiry Officer that the Petitioner is responsible for the charges alleged is totally incorrect. The Presenting Officer has failed to introduce the relevant witnesses such as welfare officer of the mine and other workman working in the canteen etc. simply by examining the audit officer, who state to have audited the stores material and colliery manager, folded up the enquiry with a pre-conceived notion. The Enquiry Officer has ignored the fact that from 11.3.98 to 9.7.98 one Mr. M.V. Satyanarayana has worked as the canteen clerk. Despite specific pleading in this regard, the same was ignored and the Petitioner was held to be responsible for the alleged misappropriation of canteen provisions from 11.7.98 to 9.7.98. though the Petitioner has submitted a detailed explanation to the show cause notice, the Respondents did not consider any of the submissions made by the Petitioner, in turn, passed, a cryptic and unreasoned order dismissing the Petitioner from service. Despite pleading for re-auditing was not done and had the re-auditing was done the previous reports submitted by the audit could have been proved wrong, there was no reason and no body could have been put to any prejudice had re-audit/re-check was done as per the request of the Petitioner. The Enquiry Officer as well as the Respondents ought to have seen that in between 11.3.97 to 9.7.98 not only M.V. Satyanarayana but on many occasions several other persons dealt with the canteen store material. There was no system of giving and taking charges as and when the canteen clerk is on leave. And as such fixing the responsibility for the alleged deficiencies in the canteen material only on the Petitioner is improper. The Enquiry Officer as well as the Respondents ought to have seen that

there were no established and systematic procedures in maintenance of canteen. Even the circular dated 16.1.96 was not communicated to the Petitioner. Therefore holding the Petitioner as responsible for the allegations is incorrect. It is further stated that the Petitioner is not responsible for the deficiencies noticed by the Enquiry Officer during the course of the enquiry. It is also submitted that the Petitioner is the lone earning member in his family and he has no other source of livelihood except income through his employment. As a result of dismissal from service, the Petitioner and his family members have been facing hardships and starvation. Assuming without admitting that the charges alleged against the Petitioner are held proved by the Enquiry Officer, even then, imposition of punishment of dismissal from service is totally disproportionate the charges alleged against him unable to face the hunger stricken faces of his wife and children, he has even agreed to pay the alleged amounts demanded by the Respondents, in case, if he is reinstated into service. Even then, request of the Petitioner was not considered by the Respondents with sympathy. Under the circumstances stated above, the Petitioner submitted to set aside the impugned order passed by the Respondents or to modify the punishment with a lenient view.

3. **The Respondents filed counter with the averments in brief which runs as follows**:

The Respondents in their counter while admitting some of the facts have also denied some of the facts averred in the claim statement. In the counter they have stated that the Petitioner while working as a canteen clerk in GDK-10A incline Mine misappropriated amounts in canteen provisions and materials for the period from 11.3.1997 to 9.7.1998 which accounted to Rs.2,11,648-60 ps for which charge sheet was served on the Petitioner. Thereafter, a domestic enquiry was conducted by following the principles of natural justice and the Petitioner was given full and fair opportunity to defend his case in the inquiry. As the charges have been proved during the course of the enquiry, the Respondents were constrained to dismiss the Petitioner from service. The Respondents have also stated that the Hon'ble Supreme Court while dealing with misappropriation in the case of Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Limited) etc., Vs. The Secretary, Sahakari Noukarera Sangha etc., held that, " once an act of misappropriation is proved, may be or a small or large amount, there is no question of showing uncalled for sympathy in reinstating the employees in services." It is further stated that in the instant case, the Petitioner has misappropriated an amount of Rs.2,11,648-60 ps.. It was proved in the domestic enquiry and as such, the Respondent was constrained to dismiss the Petitioner from company's services. It is stated that the Petitioner was given full and fair and reasonable opportunity during the course of the enquiry and as far as his request, a defense assistant was given to assist him in the enquiry. It is also submitted that in this case a detailed enquiry was conducted by the Respondent giving full and fair opportunity to the Petitioner by complying with the principles of natural justice. The Petitioner has taken the assistance of a defence assistant during the enquiry proceeding. He has cross examined the management witnesses, but he has not produced any evidence for his defence. Before commencement of the enquiry, the procedure of enquiry was explained to the Petitioner and after satisfying himself he has participated in the enquiry along with his defence assistant. It is submitted that the Audit Department conducted stock verification of the canteen for the period from 11.3.1997 to 9.7.1998 when the Petitioner was incharge of the canteen club, and it was found that the Petitioner has misappropriated an amount of Rs.2,11,648.60 ps.. The charges were proved based on records, such as preparation of registers, stock registers, cash remittances, and super bazaar bills etc.. The Petitioner had been given ample opportunity to cross examine the witnesses. The Enquiry Officer at every stage of domestic enquiry has permitted the Petitioner to cross examine the management witnesses. It is submitted that the witnesses as produced by the Presenting Officer are relevant witnesses and evidence has been lead to prove the charge against the Petitioner. The Petitioner has failed to discharge his duties while he was incharge of the canteen and he misappropriated the amount. In fact, the Petitioner was incharge of the canteen from 11.3.1997 to 9.7.1998 and he has misappropriated the amount as pointed out in the audit report. The Petitioner has submitted his explanation to the charges levelled against him. The explanation of the Petitioner was carefully considered and there was no extenuating circumstances to take a lenient view and as such the Respondents were constrained to dismiss the Petitioner from company's service. In order to escape from the liability the Petitioner has made out a false story stating that he is a clerk attached to the welfare officer and he has no role to play in working of the canteen. It has already been proved in the enquiry that the Petitioner was responsible for misappropriation of the amount while he was incharge of the canteen. It is also stated that the Petitioner has not made out any case for interference of this Tribunal and as such the order passed by the Respondents is legal and valid and it needs no interference and with these averments, the Respondents have submitted for dismissal of the claim of the Petitioner.

4. **As per the averments made by both the sides in the claim statement as well as in the counter, the following points are to be determined**:-

I. Whether the action of the Respondents is proper and justified in dismissing the Petitioner from service?

II. Whether the order of dismissal of the Petitioner from service passed by the Respondents is legal and justified?

III. Whether the Petitioner is entitled to be reinstated in service with back wages?

5. Basing on the memo of the Petitioner's counsel, conceding the legality and validity of the domestic enquiry conducted by the Respondents' management, this Tribunal held that the domestic enquiry conducted by the Respondents' management as legal and valid vide order dated 6.2.2009.

6. I have already heard the Learned Counsels for both the sides in this matter under Sec.11(A) of the Industrial Disputes Act, 1947.

7. **Point Nos.I & II**: Both the points are taken up together for convenient discussion as the same arises from common question of laws and facts. The Advocate for the Petitioner contended that the Petitioner was appointed as a clerk Gr.II in the 1st Respondent company on 12.7.93 and was posted to work at GDK-10A incline. He also contended that the Petitioner was working as a canteen clerk there from 11.3.97 to 9.7.98. He took charge of the canteen at the said mine from his predecessor Sri Y. Seshagiri Rao, Clerk Gr.II on 11.3.97. While the Petitioner was incharge of the canteen, internal audit Department of the Respondents' company in usual course conducted verification of the canteen stores material and records for the above period. In the above verification it was found that the Petitioner misappropriated the funds and stores material of the canteen to a tune of Rs.2,11,693-60 ps. Thereafter, the Respondent management issued a charge sheet for misappropriation of the canteen amount and material under company's Standing Orders No.25(1) and 25(3). The Petitioner was ought to submit his explanation to the charges levelled against him within a stipulated time but as the Petitioner failed to submit his explanation in time inspite of giving sufficient opportunity, the Respondent company passed order for conducting a domestic enquiry by appointing one Enquiry Officer who lastly conducted the enquiry and after conducting a detailed enquiry found that the Petitioner was guilty of the charges levelled against him. Then the Petitioner was issued show cause dated 10.11.2000 by enclosing the copy of the proceedings along with the enquiry proceedings, and enquiry report to submit his representation against the same. In response to the show cause notice the Petitioner submitted his representation on 21.11.2000. The representation of the Petitioner was examined by the Respondents and it was considered to be not satisfactory. As the charges levelled against the Petitioner are proved against him and those are grave and serious in nature, the Respondents passed the order of dismissal. It is submitted that the enquiry conducted by the Respondent management is not proper. The enquiry has not been conducted by following the principles of natural justice. The Enquiry Officer held the charges alleged against the Petitioner are proved. Accordingly, show cause notice was issued, and the Petitioner submitted his explanation. Unfortunately, without considering the submission made by the Petitioner he was dismissed from service vide proceeding dated 11.5.2001. Aggrieved by the above order the Petitioner filed an appeal before the first Respondent who also rejected the same. Having left with no other alternative remedy the Petitioner has approached this court for redressal. It is further contended that the action of the Respondents in dismissing the Petitioner from service is wholly illegal, arbitrary and violative of the principles of natural justice. It is further contended that unfortunately the procedure of enquiry was not explained resulting in issuance of the impugned order of dismissal. Those reports were not furnished to the Petitioner either before or during the course of the enquiry. But basing on the reports obtained behind the back of the Petitioner, the Enquiry Officer held the charges as proved and basing on those findings of the Enquiry Officer, the impugned order of dismissal was issued. It is further contended that though the Petitioner has submitted a detailed explanation to the show cause notice, the Respondents did not consider any of the submissions made by the Petitioner, inturn, passed, a cryptic and unreasoned order dismissing the Petitioner from service. Therefore, the Petitioner submitted either to set aside the impugned order passed by the Respondents or to modify the punishment with a lenient view.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents' contended that while the Petitioner was working as a clerk Gr.II in the Respondents' company, on 12.7.93 he was posted to work at GDK-10A incline. The Petitioner was working as a canteen clerk at GDK-10A incline for the period from 11.3.97 to 9.7.98. He took charge of the canteen of the said Mine from his predecessor Sri Y. Seshagiri Rao, Clerk Gr.II on 11.3.97. During that period Audit Department of the Respondents' company in usual course conducted verification of the stores and material records for the above said period. In the above verification it was found that the Petitioner misappropriated the funds and stores material of the canteen to a tune of Rs.2,11,693.60 ps. Subsequently, the Respondents' management issued charge sheet vide letter No.GDK.10A/98/CS/82, dated 23.7.98 on the Petitioner for misappropriation of canteen funds and misconduct under company's Standing Orders No.25(1) and 25(3) which reads as follows:

"25(1): Theft, fraud or dishonesty in connection with the employer's business or property.

25(3): Willful insubordination or disobedience whether alone or in conjunction with another or other any lawful or reasonable order of a superior."

It is further contended that the Petitioner was asked to submit his explanation and inspite of giving sufficient time to the Petitioner the Respondents' management ordered for conducting a domestic enquiry by appointing one Enquiry Officer who after conducting a detailed enquiry found, the Petitioner was guilty of the charges levelled against him. Thereafter the Petitioner was issued show cause notice dated 10.11.2000 by enclosing a copy of the proceedings along with the enquiry report to submit his representation against the findings of the Enquiry Officer. In response to the show cause notice the Petitioner has submitted his representation on 21.11.2000. The Respondents' management examined the

representation of the Petitioner and it was considered to be not satisfactory. As the charges levelled and proved against the Petitioner are grave and serious in nature, and as such there are no extenuating circumstances to take a lenient view to award lesser punishment and the Petitioner was dismissed from company's service with effect from 11.5.2001. It is further submitted that the Petitioner after three years of his dismissal of service filed his claim statement u/s 2A(2) of the Industrial Disputes Act, 1947 and after taking several number of adjournments, exclusively challenging the validity of the domestic enquiry, the Petitioner filed a memo conceding the validity of the domestic enquiry. Therefore, this court was pleased to post the matter for arguments under Sec.11A of the Industrial Disputes Act, 1947. The Petitioner conceded the validity of the domestic enquiry to be legal and valid. But subsequently, during the course of argument the counsel for the Petitioner is submitting that the findings of the Enquiry Officer, is not correct. He is questioning that the enquiry is as being held without following the principles of natural justice which is not at all tenable in the eye of Law. The Learned Counsel for the Respondent contended that with the knowledge of the Petitioner his counsel conceded that the domestic enquiry conducted by the Respondent management as legal and valid and basing on the said submission this court has already held that the domestic enquiry conducted by the management is legal and valid, but the subsequent submission of the Petitioner questioning the validity of the domestic enquiry should not be accepted. It is also contended that the Respondent management filed one civil Suit before the Court of the Senior Civil Judge at Manthini for recovery of an amount of Rs.3,42,355/- towards misappropriated amount with interest from the Petitioner. The above case was registered and numbered as Original Suit No.02 of 2003. The Learned Court after hearing both the parties passed judgement in the same suit and decreed the suit with costs directing the Petitioner to pay the amount of Rs.3,41,355/- with interest @6% p.a. from the date of institution of the suit, till the date of repayment of the amount. It is further submitted that the Petitioner has not disclosed all the facts including his order of dismissal in the written statement filed by him before the court and has deliberately suppressed some of the facts while filing his claim statement before this Tribunal also with an intention of misleading the Tribunal. It is also contended that the Respondent management while filing the counter did not file the judgement and decree of the Civil Court inadvertently, but as the above judgement and decree is necessary for the effective adjudication of the present case it was filed. If the judgement passed by the Learned Senior Civil Judge, Manthini, in O.S.No.2/2003 would have been filed earlier before this court the truth could have been come out. It is further submitted that the Petitioner has misappropriated an amount of Rs.2,11,693-60 ps. while working at GDK-10A incline and during the course of the domestic enquiry all the charges were proved. The domestic enquiry has been conducted properly following the principles of natural justice. The Petitioner has conceded the validity of the domestic enquiry as legal and valid. One competent Court has already passed order for recovery of the misappropriated amount from the Petitioner. In such a circumstances it can be easily presumed that the dismissal order passed by the Respondents is justified against the Petitioner and the same is legal and valid which needs no interference by this Tribunal. The Learned Counsel for the Respondents also relied on a decision of the Apex Court reported in 2007 LLR 113 decided in the case of Depot Manager APSRTC Vs.Raghda Siva Sankar, wherein their Lordships held that, "Dismissal of a workman for theft of employer's property, as admitted by him, has been rightly upheld by the Labour Court whereas the Learned Singh Judge has erred in setting aside the dismissal order and awarding reinstatement without back wages and the Division Bench also misdirected in upholding the order of the Learned Single Judge hence the Hon'ble Supreme Court of India restored the punishment of dismissal of the workman. Reinstatement of a workman guilty of theft, as duly admitted by him, has been rightly set aside by the Hon'ble Supreme Court since the employer has lost confidence in him." In the instant case when there is allegation of misappropriation of funds and charges have been proved, the Respondents' management has already lost confidence on him.

9. On consideration of the rival contentions of both the sides it is seen that while the Petitioner was working as canteen work at GDK-10A incline for the period from 11.3.97 to 9.7.98 he took charge of the canteen of the said mine from his predecessor Sri Y. Seshagiri Rao, Clerk, Gr. II on 11.3.97, during his tenure internal audit Department of the Respondents company found misappropriation of an amount of Rs.2,11,693.60 ps. by the Petitioner. Basing on such allegation charge sheet was issued on the Petitioner for misappropriation of canteen amount, stores and material, under company's Standing Orders. Though, the Petitioner submitted his show cause to the charges levelled against him, but the explanation submitted by the Petitioner was not satisfactory for which one domestic enquiry was conducted and in the domestic enquiry the charges levelled against the Petitioner were proved. The Petitioner was ought to submit his representation to the findings of the Enquiry Officer. Even though the Petitioner submitted his representation it was not accepted by the Disciplinary Authority and ultimately order of dismissal was passed against the Petitioner. The Petitioner challenged the domestic enquiry stating that the enquiry was not conducted properly and it is a lopsided enquiry. It was claimed that the Enquiry Officer as well as the Presenting Officer were in a predetermined notion, proposed to pass adverse order against the Petitioner and finally they did not accept the plea of the Petitioner and ultimately the Enquiry Officer submitted the enquiry report finding the Petitioner as guilty. In fact, basing on the admission of the Petitioner about the validity of the domestic enquiry conducted by the Respondent management as

legal and valid, this Tribunal vide order dated 6.2.2009 passed the order holding the domestic enquiry conducted by the management to be legal and valid. Once when the Petitioner has already admitted the validity of the domestic enquiry as legal and valid and subsequently, questioning the legality and validity of the domestic enquiry as not proper and valid is not tenable in the eye of Law. Moreover, in a Civil Court the Respondents have claimed the amount misappropriated by the Petitioner by filing a Civil Suit. There the Respondent management had moved the Civil Court for recovery of the misappropriated amount of the canteen stores and materials. The Senior Civil Judge Manthini after hearing both the sides decreed the suit directing the Petitioner to pay an amount of Rs.3,41,355/- with 6% interest p.a. from the date of institution of the suit till the date of recovery of the amount. It is not known whether the decreetal amount has been recovered by the Respondents management from the decrial Petitioner or not. Since the Petitioner being an employee of the Respondent management has misappropriated a huge amount of money to the tune of Rs.2,11,693-60 ps. during a short period of his tenure while incharge of the canteen and has already found guilty of the charges levelled against him, no lenient view is to be taken to set aside the order of dismissal passed by the Respondents management against him and as such the action of the Respondents in dismissing the Petitioner is proper and justified. So also the order of dismissal passed against the Petitioner is legal and valid.

Thus, Point Nos. I & II are answered accordingly.

10. **Point No.III**: In view of the findings given in item No.1 & II, the Petitioner is not entitled to get any relief.

Thus, Point No.III is answered accordingly.

ORDER

In view of the findings made above, it is held that the action of the Respondents M/s. Singareni Collieries Company Ltd., in dismissing the Petitioner Sri J. Rajaiah is proper, legal and justified. As such, the Petitioner is not entitled for reinstatement as well as back wages.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 10th day of July, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 5 अगस्त, 2019

का. आ. 1439.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आंध्र प्रदेश मिनरल डेवलपमेंट कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 9/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 01.08.2019 को प्राप्त हुआ था।

[सं. एल-29011/22/2011-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th August, 2019

S.O. 1439.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 9/2012) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Pradesh Mineral Development Corporation Limited and their workman, which was received by the Central Government on 01.08.2019.

[No. L-29011/22/2011-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 23rd day of July, 2019

INDUSTRIAL DISPUTE No. 9/2012

Between:

The General Secretary,
APMC Employees Union,
C/o APMDC Ltd.,
Mangampet Barytes Project,
Railway Kodur, Mangampet,
Cuddapah District … Petitioner

AND

The Vice Chairman & Managing Director,
Andhra Pradesh Mineral Development Corporation
Limited, HMWSSB, Rear Block, 3rd Floor,
Khairatabad, Hyderabad – 500 004 …Respondent

Appearances:

For the Petitioner : M/s. M.V.L. Narasaiah & B. Dwarakanatha Rao, Advocates

For the Respondent : M/s.Y. Sudhakar & D.V. Kishore, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-29011/22/2011-IR(M) dated 26.3.2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the action of the management of Andhra Pradesh Mineral Development Corporation Limited not regularising the services of Shri Chandragiri Narasimhulu and 74 other trainees (As per list enclosed) is legal and justified? What relief the workmen are entitled to?"

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No.9/2012 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows**:

The Petitioner workmen were appointed as trainees in the first week of November, 2008 i.e., in between 3.11.2008 to 10.11.2008 in various dates and they are continuously working in various designations of the Respondent management. All the Petitioners are qualified persons in their respective designations mentioned in the nature of work. All of them are well qualified persons as required and prescribed educational qualifications by the Respondent. Most of them are highly educated like one Sri V. Chadragiri Narasimhulu studied B.Tech (Electrical), Pokuri Murali studied B.A., PGDCA and Smt. G. Vasantha Kumari, office Assistant Junior Assistant grade II, M.A. IRPF, Sri L. Subramanyam studied M.B.A. and all are studied not below the curriculum academic qualification i.e., SSC. All are working sincerely effectively and to the utmost satisfaction of the Respondent in their respective category of designation entrusted to them with subjective affection and satisfaction to the concerned management and they are all posted and working in the permanent vacancies

since the year of 2008. There are about 200 posts kept vacant in the Respondent's organization till 2008. The management extracting the services of this workmen in place of the permanent vacant posts and they are doing the jobs as permanent workers till today, but unfortunately the Respondent considered the workmen as trainees only, which is against the standing orders of the Respondent. It is pertinent to note that as model Standing Orders it is categorically stated that, whoever appointed on a temporary nature of work which is going to be completed within a period of six months , but here the work is in continuous nature of work but they are working since 3.11.2008 to till date. They have already completed the probation period as explained in the industrial employment and model standing orders, and if they are kept on probation after completion of their trainee period as envisaged in the definition of the workman in Industrial employment and Standing Orders act, they would have made permanent in the vacant post itself by atleast one year back itself. As all of them have completed 240 days of service as explained under Sec.25(B) of the Industrial Disputes Act. The management is paying nominal salaries to the workmen as compared with the regular employees, for the below underground workers they are paying nearly Rs.427/-(including project allowance) and for the above ground workers they are paying Rs.376/- only. In this way the management is exploiting the services of the workmen. It is further submitted that the management and the representatives of the workmen entered into an agreement in presence of the Assistant Labour Commissioner (C), under Sec.12(3) of the Industrial Disputes Act, 1947 dated 5.4.1988 which is mandatory in nature. The Respondent management has to regularize the services of the trainees who completed 240 days of services in 12 consecutive months. The Petitioner union made several representations to the Respondent management to regularize the services of the workmen in the terms and guide lines of the agreement dated 5.4.1988, but no action was taken by the Respondent management, so in these circumstances the workmen union raised dispute on behalf of 75 workmen before the Assistant Labour Commissioner(C) who also noticed the Respondent management for conciliation. In the conciliation proceeding as the dispute was not solved, the Assistant Labour Commissioner (C) submitted a failure report to the Ministry of Labour on 8.7.2011. but the matter was kept pending in the Ministry of Labour since 8.7.2011 onwards for which Sri Ch. Sankaraiah, (Secretary of the AITUC) filed a writ petition before the Hon'ble High Court of A.P., Hyderabad to expedite the matter. After hearing the matter at length, the Hon'ble High Court passed an order, directing the Respondent to send necessary proposal to this Tribunal to consider the same and also a letter was sent by the Assistant Labour Commissioner (C) in file No.5/3/2011-E2 dated 8.7.2011 and take appropriate step in that regard and take necessary steps by referring the matter to the Labour Court/ Industrial Tribunal for adjudication within the period of six weeks from the date of receipt of this order, vide its orders dated 16.2.2012. It is further submitted that thereafter the Ministry of Labour sent the reference to this Tribunal for adjudication. It is also stated that the workmen who were appointed as trainees against the vacancies of the regular post are performing the same and the similar duties of the regular employees of the Respondent management. The nature of work performed by these workmen is perennial and part of the establishment. The management is following unfair labour practice methods i.e., continuously engaging temporary trainees, in permanent vacant posts continuously for years together is nothing but unfair labour practice on the part of the Respondent management, for that reason the Management is liable for prosecution also. As the Management is being the government concerned unit is not supposed to do so, but unfortunately the Management is not regularising the services of the workmen and the action of the Management in not regularising the services is illegal, arbitrary unconstitutional, untenable and unjustified. Under the circumstances stated above, the workmen submitted/prayed this court to be kind enough to regularise the services of the workmen from the date of their appointment as trainees duly granting all other consequential benefits, such as continuity of service, difference of back wages on par with other regular employees etc., and to grant such other relief or reliefs as this Hon'ble court may deem fit and proper.

3. Respondents filed their counter with the averments in brief as follows:

The Respondent filed counter challenging all the facts averred in the claim statement. In the counter, the Respondent while admitting some of the facts mentioned in the claim statement have also specifically denying some of the material facts and have stated that the Government of India, Ministry of Labour and Employment vide its order dated 26.3.2012 referred the above dispute for adjudication to this Tribunal. The Petitioners were taken as trainees and some of them may be having the qualifications as mentioned in the claim statement, but that itself does not entitle them to be regularised. Regularization of employees depends on various factors. The Respondent has to consider the case of land oustees' families. It is the prerogative of the Management whether to regularize any trainee. It is further submitted that the Sarpanch of Mangampeta Gram Panchayati and Grama Parirakshana Committee issued notice to the corporation raising certain demands and also stating that they would resort to relay hunger strike if their demands are not implemented. The main demands are: i) Appointment to local villagers on outsourcing basis, ii) Imparting training to fifty (50) local villagers like imparting training to tribals. The request was before 341st Board meeting held on 7.5.2008. The Board approved for filling up Twenty Three (23) vacant pots through outsourcing agency from the qualified persons of Mangampeta village by the end of June 2008. As far as imparting training for fifty persons of local village to facilitate them to appear for statutory examinations, the board desired that the persons to be taken on outsourcing basis and for training shall be selected by a committee constituted by the District Collector, Kadapa. Accordingly, General Manager proposed to take Forty One on outsourcing basis on skilled category. As far as imparting training, the General manager Proposed to provide training for sixty persons i.e., fifty persons approved by the board and ten persons as

requested by Kapulapally and Harijanawada Hamlets of Mangampeta village. Further, the General Manager informed that the local villagers in a group have protested for the delay in implementing the scheme of taking the people who lost the land, houses due to mining. Though it was proposed to accept forty one on outsourcing in order to implement the Rule of Reservation, six(6) ST, two(2) BC(C), and seven (7) BC(B) were taken, which came to fifty six (56) candidates. Similarly, in respect of trainees in order to implement the Rule of Reservation sixteen (16) more were taken totalling to seventy six (76), keeping in view of the tense situation prevailing in Mangampeta. Thus, it is submitted that the persons were not taken on requirement. In order to have smooth mining operation and also to maintain peace among the villagers the seventy six (76) trainees were taken. The Board also approved only for imparting training to enable them to appear for the statutory examinations. It is also submitted that APMC Employees Union raised an industrial dispute before the ALC(C) seeking regularization of services of Sri Chandragiri Narasimhulu and other seventy four (74) trainees. The Management attended the conciliation meeting and submitted its reply stating that the trainees have been taken into employment as a welfare measure. The decision for regularization has to be taken, keeping in view both the outsource persons, and the trainees who were taken from the land oustees of Mangampeta Village i.e., displaced family members, and they have been informed that it is not possible to regularize the trainees by leaving the outsource personnel in lurch. The ALC(C) concluded the conciliation proceedings as having ended in failure. It is also informed that the Petitioners' union have filed one Writ Petition bearing No.4061 of 2012 before the Hon'ble High Court of Andhra Pradesh and subsequently the central government referred the matter to this Court for adjudication. It is further submitted that prior to the above they are employees who had been taken on outsourcing basis in view of non-availability of compassionate appointment in public sector undertakings. It is further submitted that there are two hundred and eleven tribal trainees who are being paid stipend and are being given training in different mines of the corporation to facilitate them to seek the jobs and also to appear for statutory examination. Further as on today there are six hundred and twenty three number of persons working on outsourcing basis in the corporation in different branches. It is further submitted that still the villagers are agitating for providing employment on outsourcing basis on the pretext that they have lost houses and land etc.. It is stated that the nearby villagers also may resort to seeking jobs on outsourcing basis stating that they too are affected with the mining operation being carried on by APMDC near their villages. As can be seen that the prevailing situation do not warrant regularization and in the event the members of the Petitioners' union are considered for regularization, other outsourcing persons who were engaged further of the same village who have also lost houses/land may request for regularization. It is a fact that there are vacancies to be filled up by the corporation , since number of employees are retiring year by year to a greater extent. The corporation has already initiated process requesting the government for permission to fill up the vacant posts at the earliest. In view of the facts stated above it is submitted that the request of the claimants cannot be considered since a comprehensive outlook is to be taken for considering their request. With the above averments, the Respondent requested to dismiss the present dispute and to pass such other order or orders as it may deem fit and proper.

4. **<u>As per the averments made by the parties the following points are to be determined</u>**:

I. Whether the action of the management of Andhra Pradesh Mineral Development Corporation Limited of not regularising the services of Shri Chandragiri Narasimhulu and 74 other trainees (As per list the enclosed) is legal and justified?

II. What relief the workmen are entitled to?"

5. During the course of hearing of the dispute , Sri K. Bala Subramanyam Reddy being the General Secretary of the Petitioner Union, has been examined himself as WW1 and relied on 21 documents in his examination in chief which are marked as Exhts.W1 to W21. On the other hand, one Sri H.D. Nagaraja, being the Executive Director of Respondent's management is examined himself as MW1 and also relied on 12 documents which have been marked as Exhts.M1 to M12.

6. I have already heard the Learned Counsels of both the sides in this matter and perused the documents relied on by the parties and also the written notes of arguments submitted by them.

7. **<u>Point No.I</u>**: The Learned Counsel appearing on behalf of the Petitioners during the course of arguments contended that all the workmen involved in the above ID were 75 in number, out of whom 6(six) persons have left the job and one is dead, and all are land oustees. The land of the concerned workmen were acquired for the purpose of extraction Barytes by the Respondent corporation. The Respondent corporation is a public sector corporation which is the sole organization of extraction of various minerals, which is an instrumentality of the State under Article 12 of the Constitution of India. In fact, as per G.O.Ms.No.98, dated 15.4.1986, the land oustees are entitled for providing employment on regular basis. Though the concerned workmen being land oustees have approached the Respondent for providing employment to them on regular basis, they were appointed as Trainees in between 3.11.2008 to 10.11.2008. The concerned workmen were assured that, on completion of training period, they would be regularized, and believing the version of the authorities of the Respondent, they joined in the Respondent's corporation as trainee and continuing with a fond hope that, their services would be regularized. All the concerned workmen possess requisite qualifications to hold the post of clerks, etc.. The details of qualifications of all the workmen have clearly mentioned in the claim

statement. It is further contended that though nearly 200 regular vacancies are available, in Respondent's corporation the concerned workmen were still continuing as trainees, but the regular work is being extracted from them from the date of their initial appointment i.e., from November, 2008 onwards. It is contended that the concerned workmen have completed 240 days in each calendar year. The similarly situated persons were provided regular employment by entering into a Memorandum of Settlement dated 5.4.1998. The above settlement mandates that, the trainees who have completed 240 days of service are entitled to be regularized. Admittedly, in this case, all the concerned workmen have completed 240 days of service in each calendar year and all of them are entitled to be regularized. Therefore, in terms of the Memorandum of Settlement dated 5.4.1998, the services of the concerned workmen ought to have been regularized by extending benefits of the settlement dated 5.4.1998. It is further contended that, as per the evidence recorded before this court, the management witnesses have clearly admitted that there are vacancies lying in the Respondent's corporation MW1 in his evidence has stated that the Respondent has made correspondence with the government to give permission to fill up the vacancies. The workmen are getting minimum wages as per the guidelines of the Central Government. Last two years, profit is 150 crores per annum. These workmen are doing similar work on par with the regular employees of the Respondent management. MW1 has also admitted that the Respondent management has issued ID cards to the workmen (the Petitioners) mentioning their designation as Trainees. MW1 has also admitted that, admittedly there are about 200 regular vacancies in the Respondent's corporation. MW1has further admitted that the concerned workmen in this ID are the land losers and the intention of the Board was to rehabilitate them, as they are land oustees, and since the year 2008 the concerned workmen are working with the Respondent's organization without any break and they were being paid directly by the Respondent corporation. The workmen are also paying Provident Fund contribution from their wages. The Respondent has given mediclaim policy to the workmen. The Learned Counsel for the Petitioners contended that when such is the intention of the Respondent organization to rehabilitate the concerned workmen, who were land oustees, by engaging them in service and continuing them as Trainees without regularising their services would not serve any purpose. It is further contended that when clear regular vacancies are available, the Petitioners are fully qualified and discharging the duties on par with other regular employees and there is a settlement entered into under Section 12(3) of ID Act for regularization of the workmen as regular employees on completion of 240 days in a calendar year and when the similarly situated persons were regularized, the concerned workmen, being land oustees ought to have been regularized against the regular vacancies in terms of G.O.M.S.No.98, dated 15.4.1986. In such circumstances, the action of the Respondent corporation in not regularizing the concerned workmen as regular employees is not justified.

8. He further contended that similar issue of regularization of services of 181 daily rated workmen in the Respondent corporation had fallen for consideration before this Hon'ble court in ID No.1/2002. This Tribunal having considered the issue, passed an award on 3.10.2003, observing that the action of the management of APMDC Limited in not regularizing the service of 181 daily rated workmen is not justified, and a consequential direction was given to the Respondent corporation to regularize their services. Pursuant to the above award passed by this Tribunal, the services of those daily rated workers were regularized. In this case, the concerned workmen have also similarly situated like that of the workmen in ID No.1/2002. As per his contention admittedly there are clear regular vacancies in the Respondent corporation and the concerned workman are fully qualified and discharging regular duties on par with other regular employees, thus, the services of the daily rated workmen are entitled to be regularized on completion of 240 days in 12 consecutive months. Therefore, non-regularization of the concerned workman by the Respondent corporation which is a public sector organization is wholly unjustifiable and untenable. He further contended that the Respondent is denying the benefit of regularization of the concerned workmen on the ground that, the Board approved for appointing the concerned workmen as trainees only, on the ground that when G.O.Ms. No.98 dated 15.4.1986 passed by the Government mandates that, land oustees are entitled to be provided regular employment the concerned workmen in this ID, who have completed 240 days in 12 consecutive months, in not regularising their services on a premise that the Board has not approved for regularization is not justifiable in nature. It is further contended that several representations were submitted seeking regularization of the services of the concerned workmen, but their case has not been considered in proper prospective. The Respondent corporation which is an instrumentality of the State under Article 12 of the Constitution of India is expected to act fairly and justifiably, that too, keeping in view of the Memorandum of Settlement dated 5.4.1998, through which the similarly situated persons were regularized and the provisions of G.O.Ms.No.98, dated 15.4.1986 which mandates the regular appointment of land oustees. The concerned workmen have been continuing in services with a fond hope that one day or the other their services would be regularized. It is further contended that when there are clearly regular vacancies and the concerned workmen have been working for more than 9 years and putting more than 240 days in each calendar year, there is no justification in not regularizing the services of the concerned workmen as regular employees. Furthermore, this Tribunal has already decided the similar issue directing the Respondent to regularize the services of the workmen as the concerned workmen in this ID are also similarly situated, seeking the same relief. It is also contended that the workmen are the members of the Petitioners' union despite repeated approach, when the concerned workmen were not regularized a dispute was raised before the conciliation officer. The said conciliation was ended in failure, which resulted in the present reference. Lastly, it is contended that when the concerned workmen in this ID, possess the qualifications and performing the duties on par with

other regular employees for nearly 9 years, despite availability of clear regular vacancies, there is no justification in not regularizing the services of the concerned workmen by the Respondent, which is a public sector undertaking. Such an action on the part of the Respondent amounts to unfair labour practice. In view of the facts cited above, the Learned Counsel for the Respondent submitted that the workmen are entitled to be regularized and the reference may be necessary in favour of the workman with a direction to regularise the service of the workmen as regular employees with effect from on completion of 240 days from the date of their initial engagement as trainees and grant all other consequential and attendant benefits including that of continuity of service and back wages.

9. On the other hand, the Learned Counsel appearing for the Respondent contended that the Respondent corporation is an Undertaking of Government of A.P. in development of Mineral Resources in A.P., including exploration, exploitation, conservation, processing, beneficiation, conversion into value added products and promotion of mineral based industries. The Petitioners being trainees of State owned organization they cannot maintain the present industrial dispute before the Central Government Industrial Tribunal and the same is liable to be dismissed due to want of jurisdiction. The relevant claim of the Petitioner workmen in the present industrial dispute can only be granted by the State of Andhra Pradesh and not by the Respondent corporation. The present industrial dispute raised by the Petitioner workmen without arraying / impleading the State Government as a party is not maintainable. Therefore, the present ID is liable to be dismissed on the ground of non-joinder of necessary parties. It is contended that the Petitioners are apprentices/trainees and not workmen as defined under the Industrial Disputes Act. If any dispute arises the settlement has to be made by the Apprentice Advisor as per Section 20 of the Apprentice Act, 1961 and the decision would be final. In this case, the Petitioners, without availing the statutory remedy available to them have raised the present industrial dispute which is not maintainable. The services of the workmen can not be regularized without following the Regular Recruitment Procedure. The regular procedure that the corporation follows for recruitment is that, it issues a notification calling the application from all the parts of the country not only from the State of Andhra Pradesh but also from other states as technicality is involved in each and every post of the Respondent's organization. The Petitioners /workmen being trainees without undergoing a proper selection and without having requisite qualifications cannot seek regularization of services. It is further contended that a regular appointment to a post under the State can be made only by issuing an advertisement in the prescribed manner which may include inviting applications from the Employment Exchange, where eligible persons get their names registered or by holding a proper selection. In this case, The Petitioners without undergoing regular procedure of recruitment cannot seek regularization of services. It is further contended that the Petitioners/workmen having not placed any certified Standing Order or service condition of the corporation to show that the trainees are entitled for regularization of services. The present ID is also not maintainable as the Secretary individually is not competent to represent the Union as the union has to be represented by the Secretary. The workmen have also not produced any documents to show that their union is a registered union and is competent to espouse the grievance on behalf of the workmen. There is no master and servant relationship or employer and employee relationship between the Petitioners and the Respondent organization and the Petitioners cannot seek regularization of service on mere strength continuance of service. The Petitioners/workmen being trainees without possessing requisite educational qualifications and without being appointed as per the constitution scheme cannot seek regularization of service. The claim made by the workmen is also barred by limitation as the same is not raised within 15 days of receipt of the reference. He further contended that the award of the Labour Court in ID No.1/2002 relied on by the Petitioners is not applicable to the present case as the facts and the issue involved in that case is entirely different. In continuation to the above argument the Learned Counsel for the Respondent also relied on a decision of the Apex Court reported in 2006 (4) SCC 1 decided in the case of State of Karnataka Vs. Uma Devi and referring para 43 of the said judgement, he contended that "as because of a temporary employee or casual wage worker any time …..confirm his appointment is not entitled to be absorbed in service or made permanent merely at strength of continuance if the original appointment was not made by following a due process of selection as envisaged by the legislation. Referring to the Para 43 of the said judgement he further contended that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confirm any right on the appointee, if it is a contractual appointment, the appointment come to an end at the end of the contract, if it were an engagement or appointment daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a contractual employee could not claim to be made permanent on the expiry of his term of appointment. It is also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on strength of continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of adhoc employees who by the very nature of their appointment do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional scheme." Similarly, referring to Para 47 of the above cited judgement, he contended that, "when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the

appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post." He also relied on another decision of the Apex Court reported in 2005(2) SCC 470 in the case of Dhampur Sugar Mills Ltd., Vs. Bhola Singh, wherein it has been held that, "in terms of the provisions of Apprentice Act 1961, a trainee or an apprentice has no right to be absorbed in services. It is true that if the provisions of the Apprentices Act apply, the provisions of labour law would have no application." He further relied on another case law reported in 2013 AIRSCW 347, decided in the case of Haryana Power Generation Corporation Limited and others Vs. Harkesh Chand and others, wherein at paras 21 to 27, it has been held that, "Apprentices are trainees and not workers and employers has no obligation to appoint them." He further relied on another decision of the Apex Court reported in 2004(8) SCC 402 decided in the case of UP State Electricity Board Vs. Shiv Mohan Singh and another, wherein at para 43 of the judgement, it has been observed that, " Therefore a combined reading of the sections as well as Rules makes it clear that apprentices are only persons undergoing training and during that training they are entitled to get a particular stipend, they have to work for fixed hours and at the end period of the training they have to appear in the test and a certificate is issued to them. There is no obligation on the part of the employer to give them any employment whatsoever. The position of the apprentice remains as an apprentice trainee and during the period of training they will not be treated as workmen. Only obligation on the part of the employer is to impart them training as per the provisions of the Act and Rules and to pay stipend as required under Rule 11 and beyond that there is no obligation on the part of the e employer to accept them as his employees and give them the status of workmen. There is no relation of master and servant or employer and employee." He further relied on another decision of the Apex Court reported in 2009 (15) SCC 50, decided in the case of Managing Director, Hindustan Photo films and another Vs. H.B. Vinobha and others, wherein it has been held that, "we are unable to accept the findings of the Division Bench of the High Court when the Division Bench itself had come to the conclusion that the order of regularization of the Respondents who were appointed as trainees could not be sustained because the Respondents were appointed as trainees for a particular period and at a fixed salary and that period has also expired. Only because of an interim order, the services of the Respondents were directed to be continued, which cannot be the ground to hold that they should be regularized as regular employees of the appellants." Similarly, he also relied on the decision reported in 2017 AIR SCW 11, decided in the case of State of Jammu Kashmir Vs. District Bar Association, Bandipora wherein at Para 19 of the judgement it was held that, "Regularization is not a source of recruitment nor is it intended to confer permanency upon appointments which have been made without following the due process envisaged by Artciles 14 and 16 of the Constitution." He relied on another decision reported in 2015(5) ALD 705 and referring to Para 14, of the said judgement he contended that, "even assuming by virtue of their continuing to work with APSRTC, as its employees, still they cannot claim legitimate right of regularization since their inceptional engagement was without following any appointment procedure." Lastly, he relied on another decision of the Apex Court reported in 2007 (1) SCC 408, wherein at Paras 37, 38 and 51 of the judgement it was held that, "Para 37: creation and abolition of posts and regularization are purely executive functions vide P.U. Joshi V. Accountant General. Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the Respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive or legislature. There is broad separation of powers under the Constitution, and the judiciary too, must know its limits." Relying Para 38 of the judgement, he also pointed out the Respondents have not been able to point out any statutory rule on the basis of which their claim of continuation in service or payment or regular salary can be granted. It is well settled that unless there exists some rule no direction can be issued by the court for continuation in service or payment of regular salary to a casual, adhoc, or daily-rated employee. Such directions are executive functions, and it is not appropriate for the court to encroach into the functions of another organ of the State. The courts must exercise judicial restraint in this connection. The tendency in some courts/Tribunals to legislate or perform executive functions cannot be appreciated. Judicial activism in some extreme and exceptional situations can be justified, but resorting to it readily and frequently, as has lately been happening, is not only unconstitutional, it is also fraught with grave peril for the judiciary." The Learned Counsel for the Respondent contended that the Petitioners were trainees, they have not been appointed against any regular vacancy following due process of law. So, they cannot be regularized in service. Even though there is vacancy in the Respondent's organization. The claim of the Petitioner workmen is not justified and as such, such claim of the members of the Petitioner union is liable to be rejected.

10. On consideration of the rival contentions of both the sides and on perusal of the materials available on record it is seen that, admittedly the Respondent organization which is a public sector corporation and it meant for exploration of various minerals. The members of the Petitioners union are land oustees and their lands have been acquired by the Respondent corporation for the purpose of extraction of minerals. As per GOMS No.98, dated 15.4.1986, the land oustees are entitled for providing employment on regular basis. The members of Petitioners union have joined in the

Respondent's corporation in between 3.11.2008 to 10.11.2008 as trainees and are continuing as trainees till date and are discharging their duties as against the regular vacancies. They have been provided ID cards by the Respondent corporation and are identified as the employees of the Respondent corporation. Their training period is continuing endlessly. It is not known how long they will continue in training as trainees and when their training period will be completed? It is also the admitted fact that all the members of the Petitioners' union having acquired their requisite qualification and as per their qualification they have been discharging their duties on par with the regular employees of the Respondent's corporation. It is the further admitted fact that there is about 200 vacant posts lying in the Respondent's corporation and all the members of the Petitioner's union are eligible to get employment or job as against the vacant post by virtue of their experience. The management witness in his cross examination has clearly admitted that, "there is about 300 regular vacancies in the Respondent corporation and the Respondent has made correspondence with the Government to give permission to fill up the vacancies. The workmen are getting minimum wages as per the guidelines of the Central Government. Last two years, profit of the corporation is 150 crores per annum. These workers are doing similar work on par with the regular employees of the Respondent management. The Respondent has issued ID cards to the workmen (Petitioners), making the designation as Trainees.." He also admitted that, "the workmen were land oustees and the Directors have taken decision to rehabilitate them. Since the year 2008 the workmen are working in their organization without any break. The Respondent is paying wages to the workmen directly. The workers are also paid Provident Fund contribution from their wages. The Respondent has given mediclaim policy to the workmen." The above admission of the management witnesses clearly indicates that the members of the Petitioners union are regularly and continuously working in the Respondent corporation since 3.11.2008. The members of the Petitioners union have also making several correspondence with the authorities of the Respondent corporation to regularize them in service. Furthermore, previously 180 temporary workers have also been regularized by the Respondent corporation by virtue of the award passed by this Tribunal in ID No.1/2002. The Learned Counsel appearing on behalf of the Respondent organization relied on so many decisions contending interalia that the members of the Petitioners' union are Trainees and they have no right to claim regularization. He has further contended that since they have not been appointed following the due procedure as prescribed under law, they cannot be regularized. As has been stated earlier, the members of the Petitioners' union are working as Trainees since the month of November, 2008 and continuing as such till date without any break. They have been given minimum wages. Even though they have discharged their duties on par with the regular employees of the Respondent's corporation. They have been given equal pay for equal work. They are discharging their duty continuously and are working more than 240 days in a calendar year. All the members of the Petitioners' union have gathered experience by virtue of their long standing work. They have got requisite qualification. There is no allegation against them as regards their work. In view of the GOMS No.98 dated 15.4.1986, the land oustees are entitled for providing employment on regular basis. When the members of the Petitioners union are land loosers, working continuously since more than a decade and on par with the regular employees of the Respondent corporation. The Respondent organization without providing them regular service have adopted unfair labour practice. In the instant case the decisions relied on by the Learned Counsel for the Respondent are not at all applicable to the members of the Petitioners' union. In view of the fore gone observations made above, the management of the Respondent corporation in not regularising the services of the members of the Petitioner's union is not legal and justified and they are entitled to be regularized.

Thus, Point No.I is answered affirmatively in favour of the Petitioners' union.

11. **Point No.II**: In view of the fore gone discussion made in Point No.I it can safely be held that the members of the Petitioners' union are entitled to get their services regularized, at the same time the Respondent corporation is directed to get the services of the Petitioners' union regularized providing equal pay for equal work at par with the regular employees of its corporation.

Thus, Point No.II is answered accordingly. Hence, order.

Result:

In the result, the reference is answered as under:

The action of the management of Andhra Pradesh Mineral Development Corporation Limited of not regularising the services of Shri Chandragiri Narasimhulu and 74 other trainees (As per list enclosed) is neither legal Nor justified. The Respondent corporation is directed to regularize the services of the members of the Petitioners union who are now working in the Respondent's corporation, within a period of four months from the date of receipt of this award, failing which, the members of the Petitioners union are at liberty to take appropriate steps as per Law.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 23rd day of July, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri K. Balasubramanyam Reddy	MW1: Sri H.D. Nagaraja

Documents marked for the Petitioner

Ex.W1: General Body resolution

Ex.W2: Photostat copy of order passed in WP No.5113 of 2012

Ex.W3: Photostat copy of notice sent to the Respondent by the Petitioner

Ex.W4: Photostat copy of memo No.5/3/11, dt. 8.7.2011

Ex.W5: Photostat copy of reference dt. 26.3.2012

Ex.W6: Photostat copy of APMDC Mangapet 75 trainees workers list

Ex.W7: Photostat copy of letter of APMDC

Ex.W8: Photostat copy of letter dt. 12.4.11

Ex.W9: Photostat copy of APMDC letter dt.9.6.2010

Ex.W10: APMDC statement dt.26.7.2011

Ex.W11: Photostat copy of provident fund particulars of workmen

Ex.W12: Computer extract

Ex.W13: Photostat copies of ID cards issued by APMDC management

Ex.W14: Photostat copy of agreement between management and workers dt.5.4.1988

Ex.W15: Photostat copies of issued by Respondent dt. 19.11.2011 & 7.1.2012

Ex.W16: Photostat copies of B Registers, date of appointment, payment and payment of bonus particulars of workmen

Ex.W17: Photostat copy of award passed in ID No.1/2002 dt. 3.10.2003

Ex.W18: Photostat copy of Hand Book published by the APMDC

Ex.W19: Photostat copy of service rules

Ex.W20: Photostat copy of details of manpower branchwise and vacancies

Ex.W21: Statement of performance of APMDC

Documents marked for the Respondent

Ex.M1: Photostat copy of representation from villagers

Ex.M2: Photostat copy of office correspondence of Respondent, General Manager to Vice Chairman & Managing Director dt.22.4.2008

Ex.M3: Photostat copy of office correspondence of Respondent, General Manager to Vice Chairman & Managing Director dt.4.5.2008

Ex.M4: Photostat copy of office correspondence of Respondent, General Manager to Vice Chairman & Managing Director dt.5.5.2008

Ex.M5: Photostat copy of office correspondence of Respondent, General Manager to Vice Chairman & Managing Director dt.6.5.2008

Ex.M6: Photostat copy of extract of Minutes of 341st meeting dt.7.5.2008

Ex.M7: Photostat copy of lr. submitted to District Collector, Kadapa dt.4.7.2008

Ex.M8: Photostat copy of representation submitted by villagers dt.8.9.2008

Ex.M9: Photostat copy of Memorandum of Settlement dt. 30.7.2010

Ex.M10: Photostat copy of Memorandum of Settlement dt. 30.7.2010

Ex.M11: Photostat copy of lr. from Ministry of Labour & Employment dt.8.7.2011

Ex.M12: Photostat copy of lr. from Ministry of Labour and Employment dt.19.8.2000

नई दिल्ली, 5 अगस्त, 2019

का. आ. 1440.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 48/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 01.08.2019 को प्राप्त हुआ था।

[सं. एल-17012/31/2013-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th August, 2019

S.O. 1440.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 01.08.2019.

[No. L-17012/31/2013-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 11th day of July, 2019

INDUSTRIAL DISPUTE No. 48/2014

Between:

Sri V. Venkateswara Rao,
S/o Basavaiah,
D.No.1-2-55, Pallikona (P.O.)
Bhattiprol (M), Guntur District. …Petitioner

AND

1. The Sr. Divisional Manager,
LIC of India, Divisional office,
Kennedy Road, Machilipatnam.

2. The Divisional Manager,
LIC of India, Repalle Branch,
Repalle. Guntur Dist. … Respondents

Appearances:

For the Petitioner : Sri Y. Ranjeeth Reddy, Advocate

For the Respondent : Representative

AWARD

The Government of India, Ministry of Labour by its order No. L-17012/31/2013-IR(M) dated 5.3.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

"Whether the removal from service of Shri V. Venkateswara Rao, Ex-Temp. Class-IV, LIC of India, Repalle branch w.e.f. 28.1.2013, is legal and justified? If not, what relief the workman is entitled to?"

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No.48/2014 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows**:

The case of the Petitioner is that he was appointed as a temporary sub-staff on 1.3.2010 and performed his duty as a Peon in Class –IV cadre in the 2nd Respondent's office on payment of Rs.150/- per day and the Petitioner was working continuously without any break, upto the satisfaction of the superior officers. There was no complaint of whatsoever in nature against the Petitioner in his entire service period. It is submitted that the Respondents have not issued any appointment letter to the Petitioner and only issued wage slips from the year 2011 onwards. During his service period, the Petitioner used to sign on the vouchers at the time of taking salary and not extended any benefits like Provident Fund and ESI, etc.. It is further submitted that from the date of his joining the Respondent is in practice of paying the wages in dummy names to the Petitioner. The Labour Enforcement Officer, who conducted the inspection basing on the complaint made by the Insurance Employees Union, Machilipatnam, and after inspection of the labour authorities, the Respondent was paid the wages in individual names and also started paying minimum wages to the Petitioner. It is also submitted that while the matter stood thus, suddenly the Petitioner's services was orally terminated on 28.1.2013 without conducting any enquiry, notice pay, compensation is arbitrary, illegal, unjust and contrary to the provisions of the Industrial Disputes Act and against the principles of natural justice and the same is nothing but unfair labour practice of the Respondents. Immediately the Petitioner made a representation to the first Respondent requesting him to reinstate him into service. But there was no response from the side of the Respondent. Then the Petitioner gave a representation to the Assistant Labour Commissioner (C), Vijayawada as well as to the first Respondent on 2.2.2013 requesting him to intervene in the matter and to direct the concerned officials to reinstate the Petitioner into service. Thereafter the Assistant Labour Commissioner (C), Vijayawada issued notice to the Respondents for a joint meeting/conciliation proceeding. Accordingly, the Respondents participated in joint meetings and submitted their reply, denying all the contents made in the Petitioner's representation. The Assistant Labour Commissioner (C) closed the conciliation meetings on 23.9.2013 and sent the failure report to the Government of India. It is also submitted that the action of the Respondents by terminating the Petitioner from service w.e.f 28.1.2013 is illegal and unjustified. The above said termination is in violation of Sec.25F, G and H of the Industrial Disputes Act. The Respondents have not given any notice and also not given any retrenchment compensation to the Petitioner whose last pay was Rs.270/- per day at the time of his termination. The Respondent No.2 sent a letter to the District Employment Officer on 16.1.2013 for engagement of peons on temporary basis in place of 53 permanent vacancies. It is stated that in one side the Respondents are calling names from the Employment Exchange for engagement of peons and in another side they terminated the service of the Petitioner from 28.1.2013 without conducting any enquiry and without any notice or notice pay. It is nothing but unfair labour practice adopted by the Respondents. It is also submitted that the Insurance Employees Union made complaint to the labour authorities, CBI, and Central Vigilance Commission with regard to unfair labour practice adopted by the Respondents and basing on the complaints made by the Insurance Employees Union all the concerned departments investigated into the matter and submitted their report to the concerned officials holding that the Respondents are adopted unfair labour practice upto 2011. The above report clearly established that the Petitioner was victimised by the Respondents. It is also submitted that the Petitioner never asked for regularization of his service. Even though the Petitioner is requesting to work under the Respondents, they did not pay any heed to his request. It is submitted that the entire family is depending on the Petitioner's income, and after termination of the Petitioner from services, they are facing untold problems and hardship and the Petitioner is the sole bread earner in the family. Inspite of his best efforts the Petitioner could not secure any other alternate employment and the Petitioner is still unemployed from the date of his termination. Under the circumstances stated above, the Petitioner submitted to pass an award by setting aside the oral termination order dated 28.1.2013 directing the Respondents to reinstate the

Petitioner into service with continuity of service, full back wages and all other attendant benefits and to pass such order or other orders as this Tribunal deem fit and proper.

3. The Respondents were summoned but, inspite of service of summons, the Respondents did not come forward to challenge the claim of the Petitioner and as such the Respondents are set ex-parte. Subsequently, ex-parte hearing was taken up. During the course of the ex-parte hearing the Petitioner workman was examined himself as WW1 and also relied on 14 documents which have been marked as Exhts.W1 to W14.

4. I have already heard the Learned Counsel for the Petitioner in this matter. Perused the evidence adduced on behalf of the Petitioner workman as well as the documents relied on by him during the course of hearing. The evidence of WW1 fully corroborates the averments made in the claim statement and the documents relied on by the workman vide Exhts.W1 to W14 also find support from the averments of the workman made in his examination in chief filed in shape of chief evidence affidavit. The argument advanced by the Learned Counsel for the Petitioner also find support from the averments made in the claim statement as well as the documents relied on by the Petitioner.

5. On perusal of the materials available on record as well as the unchallenged testimony of WW1 coupled with the documentary evidence relied on by him under Ex.W1 to W14 do well establishes the case of the Petitioner workman. Hence, the Petitioner is entitled to get the relief as prayed in the claim statement and as such, the reference is answered accordingly. Hence, order.

Result:

In the result, the reference is answered as under:

The removal from service of Shri V. Venkateswara Rao, ex-Temp. Class-IV, LIC of India, Repalle branch w.e.f. 28.1.2013, is neither legal nor justified. The oral termination dated 28.1.2013 is hereby set aside. The Respondents Management are directed to reinstate the Petitioner into service with continuity of service, full back wages along with all other attendant benefits which the Petitioner workman is entitled within a period of four months after receipt of this order.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 11th day of July, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri V. Venkateshwar Rao	NIL

Documents marked for the Petitioner

Ex.W1: Photostat copy of reference vide No.L-17012/31/2013 issued by Government of India.

Ex.W2: Photostat copy of representation to R1 dt.2.2.2013

Ex.W3: Photostat copy of representation to ALC(C), Vijayawada dt.2.2.2013

Ex.W4: Photostat copy of minutes of conciliation proceeding dt.23.9.2013

Ex.W5: Photostat copy of list of class IV and R2 dt.22.2.2012

Ex.W6: Photostat copy of lr. From Respondent to District Employment officer dt.16.1.2013

Ex.W7: Photostat copy of inspection report by the ALC(C), Vijayawada dt.2.2.2012

Ex.W8: Photostat copy of CBI report dt.3.5.2012

Ex.W9: Photostat copy of enquiry report submitted by the DCLC(C), Bangalore dt.14.6.2012

Ex.W10: Photostat copy of inspection report by the Central Vigilance Commission dt.26.2.2013

Ex.W11: Photostat copy of payment voucher from July, 2011 to 31.12.2011

Ex.W12: Photostat copy of payment voucher from January, 2012 to January, 2013

Ex.W13: Photostat copy of lr. by R2 to LEO dt. 14.11.2012

Ex.W14: Photostat copy of arrears payment voucher dt.12.11.2012

Documents marked for the Respondent

NIL

नई दिल्ली, 5 अगस्त, 2019

का. आ. 1441—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 133/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 01.08.2019 को प्राप्त हुआ था।

[सं. एल-17012/66/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th August, 2019

S.O. 1441.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 133/2014) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 01.08.2019.

[No. L-17012/66/2014-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 23rd day of July, 2019

INDUSTRIAL DISPUTE No. 133/2014

Between:

Sri L.M. Naidu,
S/o Appalu Naidu,
Santhapalem (Village)
Danderu (Post), Kothavalasa (Mandalam)
Vizianagaram District (A.P.) …Petitioner

AND

The Manager (E & OS)
Life Insurance Corporation of India
Divisional Office, PB No.411,
Jeevan Bima Road,
Jeevan Prakash, Visakhapatnam- 530 004 …Respondent

Appearances:

For the Petitioner : None

For the Respondent : Legal Representative

AWARD

The Government of India, Ministry of Labour by its order No. L- 17012/66/2014-IR(M) dated 11.8.2014 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Life Insurance Corporation of India and their workman. The reference is,

SCHEDULE

"Whether the action of the management of the Life Insurance Corporation of India, Divisional office, in terminating the services of Sri L.M. Naidu, Ex- Substaff w.e.f. 24.1.2013 is legal and/or justified? If not, what relief the concerned is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 133/2014 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case but, he failed to avail the same. Non-appearance of the Petitioner and non-filing of claim statement by him clearly shows that perhaps the dispute of the parties have already been settled and the Petitioner has no claim to raise against the Respondents, as such, it is not desirable to linger the case to any further date. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 23rd day of July, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 5 अगस्त, 2019

का. आ. 1442.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आईसीआईसीआई प्रूडेंशियल लाइफ इंश्योरेंस कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 96/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 25.07.2019 को प्राप्त हुआ था।

[सं. एल-17012/32/2012-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th August, 2019

S.O. 1442.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 96/2013) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ICICI Prudential Life Insurance Company Ltd. and their workman, which was received by the Central Government on 25.07.2019.

[No. L-17012/32/2012-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 96/2013

Date of Passing Award- 02nd July, 2019.

Between:

Shri Yogendra Nagar,
S/o Shri Mahavir Singh Nagar,
C/o Shri Shailendar Akhouri, Sai Niwas,
H. No. 566, Sector-16, Faridabad (Haryana) … Workman

Versus

The General Manager,
M/s. ICICI Prudential Life Insurance Company Ltd.,
55, First Floor, Krisna Tower,
Neelam Bata Road,
NITF Faridabad (Haryana) …Management

Appearances:-

Claimant in person, (A/R) For the Workman

Shri Sanjay Rawat, (A/R) For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of M/s ICICI Prudential Life Insurance Company Ltd., Faridabad, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 17012/32/2012 (IR(M) dated 06.02.2013 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of M/s. ICICI Prudential Life Insurance Company Ltd. in terminating the services of Shri Yogender Nagar w.e.f. 24.08.2009 is legal and justified? What relief the workman is entitled to?"

The claimant in his claim statement has stated that on 13.08.2008 he was appointed as a Unit Manager in Grade-1 for the management on a basic monthly salary of Rs. 4500/- alongwith other admissible allowance. During this period he was neither discharging any administrative nor supervisory nature of work though his designation was Unit Manager. Thus, he is a workman in terms of section 2(s) of the ID Act 1947. When he was discharging his duties with utmost satisfaction of the employer suddenly on 24.08.2009 the management by a verbal order terminated his service and thereby refused to allot duty to him. At the time of such termination the provision of section 25-N and 25-G of the Id Act was not complied. Soon after his termination the management employed new persons against his vacancy. On 14.01.2010 a demand notice was served on the management by the workman and a copy was sent to the Labour Commissioner Faridabad were conciliation proceeding was taken up. The management though participated did not agree to the terms of compromise proposed by the workman as well as by the conciliation officer. As a result thereof a failure report was submitted by the conciliation officer to the government of Haryana who did not entertain the same and returned with observation that the matter can be dealt by the central government alone.

Approach being made by the workman the central government again took up a conciliation proceeding which again failed. Thereafter the Central Government referred the matter to Central Government Industrial Tribunal.

The claimant workman has stated that he had completed more than 240 days of work in the calendar year for the management and the later without conducting any domestic inquiry illegally terminated his service which amounts to unfair labour practice. Thereby the workman has prayed that the management may be directed through an award to reinstate him in service with full back wages and retain continuity of his service with all other service benefits.

The management filed written statement challenging the maintainability of the proceeding on territorial jurisdiction of this tribunal. It has further disputed that the claimant is not a workman as defied u/s 2(s) of the ID Act. He was all along performing the supervisory nature of work. Not only that the management has denied the employer employee relationship with the workman and has explained that the workman was under the contract of personal service for the management and thus, the dispute is not an industrial dispute. In the WS it has also been pleaded that the claimant was appointed as Unit Manager Grade-1 and responsible for recruitment and management of advisors, to motivate the advisors etc. The gross monthly salary of the claimant on the alleged date of termination was 18249/-. In addition to that he was also getting the HRA like the managers. In the WS the management has disclosed the names and Code No. of advisors working under the claimant. The further stand of the management is that during the tenure of the employment the claimant was not performing in a disciplined manner and often found violating Company Rules. His performance was not satisfactory which caused loss to the company. In the month of July 2009 the claimant stopped marking his attendance and for such continuous unauthorized action on 05.08.2009 a show cause notice was issued to him asking there under to show cause within 72 Hours as to why his service shall not be terminated. This notice was issued in terms of the conditions of the employment applicable to the claimant. On the same day the claimant received the show cause notice but failed to submit the show cause within the time stipulation. Not only that the claimant also failed to report for duty thereafter. Thus, the management on 24.08.2009 passed the order of termination and a letter to that effect was duly communicated. After such termination all the financial dues of the claimant were finally settled and a no due certificate was issued. Hence, the management has pleaded that the claim petition should be dismissed and the reference be answered against the claimant.

The claimant filed rejoinder denying the stand taken by the management. It has also disputed the issue of maintainability as raised by the management.

On this rival pleading the following issues are framed for adjudication.

ISSUES

1. Whether the action of management of M/s ICICI Prudential Life Insurance Company Ltd., in terminating the services of Sh. Yogender Nagar w.e.f. 24.08.2009 is legal and justified. If so its effect?
2. To what relief the workman is entitled to? If so its effect?

During the hearing the claimant examined himself as WW1 and proved the documents marked in a series of WW1/1 to WW1/9. These documents include the offer letter of the claimant indicating his annual pay scale and designation at the time of appointment, No. of pay slip, copy of the demand notice served on the management after termination the application submitted to the conciliation officer the reference order of the government. On behalf of the management one of its employees a senior HR Manager had filed affidavit and had tendered the same. But despite several adjournments the witness did not make herself available for cross-examine of the claimant as a result thereof by order dated 21.01.2019 the evidence of the management witness was expunged. Thus, on behalf of the management no oral or documentary evidence has been adduced though alongwith the written statement the copy of the appointment letter, showcause notice, termination letter, and no due certificate were filed as Annexure-1,2,3,4 respectively. The claimant has admitted all these documents.

FINDINGS

ISSUE NO.1

To answer this issue it is necessary to adjudicate on the maintainability of the proceeding as has been raised by the management in its WS. A careful perusal of the pleading of the management it is found that the maintainability of the proceeding has been challenged on two grounds. Firstly, that the claimant is not a workman and secondly this tribunal has no territorial jurisdiction to adjudicate the dispute. The Ld. A/R for the management during course of argument submitted that the claimant was working as a Unit Manager in the office of the respondent at Faridabad and his service was terminated from there. No part of the cause of action having been taken place within the jurisdiction of this tribunal, the tribunal cannot adjudicate the same. In reply the Ld. A/R for the workman submitted that initially the failure report was submitted to the government of Haryana which returned the same observing that the Central Government is the Appropriate Authority. Accordingly a fresh conciliation took place and on failure of the same the Appropriate Government made a reference for adjudication to CGIT Chandigarh. The claimant then made application for transfer of the dispute from CGIT Chandigarh to CGIT Delhi. The appropriate government took action in this regard and passed order for transferring the reference to this tribunal. He also argued that the tribunal has to act in terms of the reference and when the Appropriate Government transferred the reference to this tribunal there is no scope for delving into the issue of territorial jurisdiction. This argument sounds convincing and it is held that when the Appropriate Government transferred the reference to this tribunal having full knowledge that the cause of action arose outside the jurisdiction of this tribunal and no challenge was made to the same by the respondent. Hence, the said issue of maintainability is held to be set at rest and cannot be entertained now.

The respondent has also challenged the maintainability on the ground that the claimant is not a workman under the definition of section 2(s) of the ID Act. The strength of the argument is that the workman was appointed as Unit Manager Grade-1 and his mensem salary was more than 10000/-Rs. Thus, he cannot be treated as a workman. In reply the Ld. A/R for the workman submitted that for computing the mensem salary of an individual the basic salary is taken into consideration which as per his appointment letter filed by the management and admitted by the claimant was much less than 10000/- per month. With regard to the nature of work discharged it has been stated by the claimant that he was never discharging the duty of a manager. To support his argument reliance has been placed in the case of **D.P Maheswari vs. Delhi administrative and others reported in AR(1983)4 SCC 293** wherein the Hon'ble Supreme Court have held that when the evidence indicates that the appellant was discharging the work of a clerk and occasionally deputed to undertake some important mission it can be held that he was mainly discharging duty of the clerical nature. The claimant has also relied upon the case of **Anand Bazar Partrika vs. the workman reported in (1970)3 SCC 248** wherein it was observed that when the principal work of claimant was of maintaining cash book and preparing various returns, and entrusted with the charge of Provident Fund Section being the senior most clerk, he cannot be termed as a Manager for the small amount of control exercised by him over the other clerk working in his section.

While pointing out to the evidence of the claimant recorded during the proceeding the Ld. A/R for the claimant submitted that the witness was cross-examined at length by the management. Except putting suggestion that he was discharging the work of the manager nothing more has been elucidated to presume that he was discharging the duty of a manager. The witness has categorically denied to the suggestion that he was instrumental in the recruitment of advisor and had the responsibility of obtaining them. He has further clarified that the management has a separate mechanism for recruitment and training of the advisor and he had absolutely no role to play in that regard.

At the cost of repetition it is stated that the management has not adduced the rebuttal evidence. Merely because the appointment letter of the claimant describes him as a Unit Manager, it cannot be accepted under any stretch of imagination that he was discharging the duty of the manager when no specific evidence for the same is available on record. Moreover the pay slip filed by the workman and marked as Exhibit WW1/2, WW1/3 WW1/4 clearly indicates that his basic mensem salary was 4179/- only which is much less than the prescribed the upper limit of the mensem salary of the workman defined under section 2(S) of the ID Act 1947. Thus, from the totality of the evidence it is held that this tribunal has the territorial jurisdiction to adjudicate the dispute referred by the appropriate government and the claimant is a workman under the definition of section 2(s) of the ID Act.

This reference has been received to adjudicate if the action of the management ICICI Prudential Life Insurance in terminating the service of the claimant is legal and justified. The stand of the claimant is that he was terminated from service by a verbal order and no termination notice, notice pay, or retrenchment compensation was paid to him. The management had also failed to follow the principle of Last come first go and thereby violated the mandatory provision of section 25-F and N of the ID Act. In the oral statement the claimant has stated that during the course of employment he was discharging his duties to the utmost satisfaction of the employer. No showcause notice was ever served on him nor any domestic enquiry was conducted for taking disciplinary action. The management alongwith the WS had filed the copy of the showcause notice and termination letter though the same were not proved by the management. This notice clearly shows that on 5th August 2009 a notice was sent to the workman calling him to showcause within 72 Hours as to why his service for continuous absence from office shall not be terminated. The termination letter again shows that on 24th August 2009 the service of the claimant was terminated since he failed to showcause to the notice. There is absolutely no evidence about the domestic inquiry conducted against the claimant for the misconduct shown by him. No evidence oral or documentary has been placed on record to prove the alleged unauthorized continuous absence of the claimant from office. It is a Principle of Natural Justice that when an action is contemplated by the employer against its employee adequate opportunity should be given to the employee for explaining the allegation leveled against him. But here is a case where the management only filed to self serving document without any supportive document showing service of the same on the workman. These two documents i.e. the show cause notice and the termination letter filed by the management alongwith the WS cannot take the place of proof that adequate opportunity was given to the claimant to showcause before passing of the termination order. Since, management has failed to substantiate the allegation against the claimant regarding his unauthorized absence and adherence of the procedure before passing of the termination order the one and only conclusion is that the said order of termination was passed arbitrarily by the management which amounts to unfair labour practice. It is also pertinent to observe here that the management had failed to follow the mandatory provision of section 25-F and N while passing the order of termination which itself makes the order illegal

and not sustainable in the eye of law. This issue is accordingly answered and it is held that the order of termination of claimant Yogender Nagar w.e.f. 24.08.2009 is illegal and not justified and thus, liable to be set aside.

ISSUE No.2

In view of the finding arrived in respect of issue no.1 it is held that the workman is entitled to the relief of reinstatement with back wages as has been claimed in the claim statement. Hence, ordered.

ORDER

The claim be and the same is allowed on contest. The order of termination passed by the respondent against the claimant w.e.f. 24.08.2009 is held to be illegal and hereby set aside. The management is directed to reinstate the workman to service on his last pay drawn within 2 months from the date when this award would become executable. Management is also directed to pay the back wages of the claimant from 24.08.2009 to the date of reinstatement within the aforesaid period of 2 months and the amount so accrued shall not carry any interest. If the management would fail to carry out the direction within the time stipulation the accrued amount shall carry interest @12% per annum from 24.08.2009 till the final payment is made. The management is further directed to extend all other service benefits including continuity of service to the workman w.e.f 24.08.2009. The reference is accordingly decided in favour of the claimant. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 5 अगस्त, 2019

का. आ. 1443.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ओ.एन.जी.सी. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 40/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.07.2019 को प्राप्त हुआ था।

[सं. एल-30011/47/2017-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th August, 2019

S.O. 1443.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 40/2017) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and their workman, which was received by the Central Government on 30.07.2019.

[No. L-30011/47/2017-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M. V. Deshpande**,** Presiding Officer

REFERENCE NO.CGIT-2/ 40 of 2017

EMPLOYERS IN RELATION TO THE MANAGEMENT OF M/S. OIL & NATURAL GAS CORPORATION LTD.

The Group General Manager - HRO,
M/s. ONCG-WOU,NBP Green Heights,
Bandra [E],
Mumbai – 400 051.

AND

THEIR WORKMEN

The President,
Oil Field Employees Association,
B-506, Sai Vihar, Sector - 15,
CBD Belapur,
Navi Mumbai – 400 614.

Maharashtra Sanghatit Asanghatit Kamgar
Sabha [MSAKS], C/o. Suryakant Bagal,
204, Shivkrupa TCH Society,
9, Jakeria Bunder Road,
Cottongreen, Mumbai – 400 033.

Maharashtra Employees Union,
Mishra Niwas, Kokanipada,
Kurar Village, Malad [E],
Mumbai – 400 097.

APPEARANCES:

FOR THE EMPLOYER	:	Mr. Paranjpe & Mr. P. A. Deogaonkar, Advocates
FOR THE WORKMEN	:	1. Mr. S. Mishra, Representative, Union No.1
		2. Mr. Bagal, Representative, Union No.2
		3. Mr. F. Mishra, Representative, Union No.3

Mumbai, dated the 17th July, 2019

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour& Employment, New Delhi vide its order No. L-30011/47/2017 – IR (M) dated 18.09.2017. The terms of reference given in the schedule are as follows :

"Whether the following demands of The President, Oil Field Employees Association are legal and justified ?''

1. To have uniform policies for all the workers irrespective of the contracts in the establishment of ONGC.
2. To get the MOU renewed with pay Revisions w.e.f. 1.1.2008.
3. To advise M/s. ONGC Management to release an advance of Rs.50,000/- per worker and to adjust it with the arrears after implementation of the Pay Revisions. If not, to what relief the workmen are entitled to ?"

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives.

3. The second party union has filed statement of claim Ex.4. According to the second party union, there is non-compliance of status-quo orders granted by Hon'ble H.C. and re-affirmed by the tribunal and MOU [tripartite agreement] reached u/s. 12 (3) of I.D. Act. There had been 3 MOUs. The first for the period from 1.12.91 to 31.3.94, second for the period from 1.4.94 to 31.12.97 and third for the period 1/98 to 31.12.07. The next MOU was due for the period from 1.1.08 to 31.12.17 and the same is pending till now.

4. It is then case of the second party union is that the ONGC [first party] hatched a plan to infuse impugned Fair Wage Policy [FWP] as a camouflage of the well established and settled MOU. The workers are already availing status of MOU with respect to all other aspects of MOU except the pay revision. The first party No.2 has accepted the continuations of MOU at various stages especially during the conciliation proceedings. The FWP is not better substitute of MOU. The said FWP is not non-existing undeclared proclamation of the first party with intention to cheat the innocent workers.

5. According to the second party union, the terms & conditions of FWP are no way congruent to that of MOU and hence FWP cannot substitute of MOU. The first party has already agreed to arrears in terms of first FWP which is @ Rs.8000/- p.m. minimum. So the demands of the workers for adhoc interim advances @ Rs.5 lakhs each and adhoc monthly salary hike @ Rs.12,000/- p.m. are legitimate and justified. Second party union is therefore asking to direct the first party to give adhoc relief to the workers and adhoc interim advances and monthly salary hike @ Rs.12,000/- p.m. with immediate effect against the dues, arrears out of final settlement of MOU and to direct the first party to complete all

the formalities for long pending revision of MOU w.e.f. 1.1.08 and to extend the benefits of MOU w.e.f. 1.1.08 to all the workers engaged in the estt. of first party.

6. The second party No. 2 union has filed statement of claim vide Ex. 33/1. According to second party No. 2 union, the management of ONGC has signed MOU with the unions on 12.7.95 for the period from 1.4.94 to 31.12.97 and also signed MOU with unions on 29.12.2000 for the period from 1.1.98 to 31.12.07 but they have not signed the MOU for the period from 1.1.08 and continued to pay the wages as per MOU dt. 29.12.2000.

7. According to the second party No. 2 union FWP is framed on the basis of minimum wages being announced by the Central Govt. from time to time for those workers who are working in the field of construction, road maintenance, building maintenance etc. Wages as per MOU since 1992 is much higher than minimum wages. Absence of MOU for the period 1.1.08 till 31.12.11 and from 1.1.12 to 31.12.17, the wages were calculated on the basis of wage settlement dt. 10.1.10 and 25.10.13 which are provided the wage revision for the port & dock workers for the period from 1.1.08 to 31.12.11 and from 1.1.12 to 31.12.17. Second party No. 2 union is therefore asking to direct the management ONGC to enter into MOU with the unions as per practice and implement the same and to direct the management ONGC to pay the arrears arising out of implementation of MOU with 15% interest thereon.

8. As per order on Ex. 6, Maharashtra Sanghatit Asanghatit Kamgar Sabha is added as second party No. 2 to the reference and the reference is amended accordingly.

9. Maharashtra Employees Union has also filed application for impleading the said union has party to the reference and as per order on Ex.4, Maharashtra Employees Union is added as second party No.3 to the present reference.

10. Second party No.3 has filed statement of claim Ex.37 and adopted the statement of claim of second party No.2 union.

11. The first party opposed the statement of claim by filing written statement Ex.21 contending therein that the reference itself is not maintainable since demands / terms of reference which is a subject matter of present reference are already covered by tripartite settlement dt. 19.9.16 signed in conciliation between the unions representing the workers employed by various contractors and deployed for fulfillment of contractual obligations under the contract awarded to them by ONGC-WOU, respective contractors and the ONGC and the management to extend the benefits of said settlement to 2nd party workers provided they are ready and willing to accept the same.

12. It is then contended by the first party that by signing the tripartite settlement the parties to the settlements have agreed to revise the wages with effect from 1.4.12 and payment of lumpsum amount for the period 1.1.08 to 31.3.12, job security through contractor. Therefore there remains nothing to adjudicate. Even otherwise cause of action as stated by the second party has taken in place in the year 2008 and after lapse of 10 years claim is raised against the first party and therefore the reference is not maintainable. The second party has no locus-standi or authority to raise the present dispute.

13. It is then contended by the first party that on expiry of MOU – 2000 which was valid upto 31.12.07 signed between ONGC-WOU, its various contractors and unions representing the workers employed by the said contractors, there was a constant demand from the unions to have a fresh MOU effect 1.1.08 thereby having uniform wage to all the contractor employees working at ONGC-WOU through various contractors. Considering these demands and with a view to have uniform wage pattern a tripartite settlement dt. 19.9.16 was arrived at between the parties in conciliation thereby agreeing to adopt a uniform FWP which is implemented at all other centres of ONGC. While signing the said settlement it was also agreed to implement the same w.e.f. 1.4.12 to 31.3.17. As per the said settlement it was agreed for bunching of 12 wage patterns based on skill sets, revision of wages for the period from 1.1.08 to 31.3.12 and payment of lumpsum amount for the said period. It was term of understanding under clause – 4 of MOU – 2000 that whole understanding applicable to ONGC shall expired on 31.12.07 hence unions were at liberty to enter into agreements with respective employers of the contract workmen. Subsequently ONGC introduced FWP for contract labour deployed in WOU Mumbai. Wages under FWP shall be applicable to minimum wages + 35% of minimum wages + Rs.50% per working day. The wage details of the certain category of MOU workers and MSA workers which are far higher shall be submitted in due course as and when required. Contract workers drawing MOU wages shall get lumpsum for the period from 1.1.08 to 31.3.12 which amounts equal to 20% of actual gross wages drawn during the above period and arrears from 1.4.12 onwards. In addition to these drawings MOU wages continue to get consolidated allowance at the increased rate and fixed HRA. Job securities is also promised through contractors.

14. It is then contended that FWP is a package of various social security and welfare measures which are as follows:

a) Statutory EPF contribution subject to wage / salary ceiling as per the EPF & MP Act, 1952 as amended from time to time;

b) Statutory ESI contribution subject to wage / salary ceiling as per the ESI Act, 1948 as amended from time to time;

c) In respect of contract labour not covered under the ESI Act either due to contract workers drawing wages exceeding the statutory wage ceiling under the ESI Act or non-implementation of ESI Act in the area of operations, Group Mediclaim Insurance [Family Floater] from any of the General Insurance Companies for annual cover of Rs.5.00 lakh subject to maximum annual premium cap of Rs.12,000/- [exclusive of taxes] per annum per contract labourer [including his family which, as per standard definition in the Mediclaim Policy shall consist of self, spouse and two dependent children], is to be obtained by the contractor; the premium thereon shall be reimbursed by ONGC subject to proof of remittance / payment. Further, the contractors shall obtain insurance cover from any IRDAI approved insurance company to meet the statutory liability towards payment of accident compensation under the Employee's Compensation Act, 1923.

d) Group Term Insurance for individual cover / benefit of Rs.5.00 lakh from LIC of India;

e) Group Accidental Insurance for individual cover / benefit of Rs.5.00 lakh for accidental death from any General Insurance Company. This will be in addition to comprehensive Insurance Policy for the Vehicle.

f) Coverage of workmen under the Group Gratuity Policy of LIC of India effect from date of commencement of the contract in all applicable contracts, which shall be transferred to the succeeding Contractor, in case of continuation of outsourced job / services beyond the period of this contract. Proof of such transfer will be provided by the contractor to ONGC before release of final bill / invoice and security deposit.

g) The insurance policies at (c), (d) and (e) shall be implemented prospectively.

h) In contracts where the contractor deploys less than 10 contract labour in ONGC operations, the liability towards statutory gratuity will be discharged by the Contractor directly to the concerned workmen at the end of the contract and proof of remittance / payment shall be provided to the Principal Employer, before the settlement of final dues of the bidder.

i) Annual bonus as per The Payment of Bonus Act, 1965, as amended from time to time, to be extended to the contract workers, even if their wages actually drawn exceed the ceiling limit for coverage under the act;

j) Annual leave with wages for not less than 18 days for workers drawing Minimum Wages.

15. It is also a case of the first party that pursuant to clause – r it is specifically agreed that the MOS dated 19.9.16 is valid from 1.4.16 to 31.3.17 in terms of section 19 of I.D. Act or till minimum wage etc. notified by the Govt. whichever is earlier. It is further agreed that the benefits of FWP shall continue to grow thereafter until replaced by subsequent settlements. On these premise the first party has sought rejection of the reference.

16. Second party No.2 by way of rejoinder Ex.50 reiterated that MOUs signed in 1992, 1995 & 2000 were MOUs in which only first party ONGC and unions are the parties and not a single contractor was party to the said MOUs. MOS dt. 19.9.16 was signed by the contractors and unions and first party ONGC was not party to the said MOS. Since first party is not party to MOS dt. 19.9.16, they have no legal rights to take shelter of said MOS. The said MOS is conditional and as per clause – 4 of MOS considering the whole package benefits which is to be ensured by the ONGC management, unions have advised / agreed to withdraw all court cases filed against ONGC and employer if any before CGIT, Labour court, Hon'ble HC & Hon'ble S.C. as necessary pre-condition for implementation of FWP in Mumbai. The cases pending in CGIT, Labour court, Hon'ble HC & Hon'ble S.C. are pertaining to absorption of the contract workers as permanent workers in the first party ONGC. Wage revision is nothing to do with absorption of the contract workers as permanent workers in the first party. But the first party wants to deny legal rights to these workers. Hence what was done by the contractors and the union is nothing to do with the present reference. Since first party ONGC is not party to the tripartite wage settlement dt. 19.9.16, ONGC cannot avoid to renew the MOU with pay revision w.e.f. 1.1.08 under the shelter of tripartite wage settlement.

17. Following issues are framed at Ex.51. I reproduce the issues along with my findings thereon for the reasons to follow are as under:

Sr. No.	Issues	Findings
1	Whether the reference is maintainable ?	Yes
2.	Whether the reference falls under the provisions of Section 2 (k) of the Industrial Disputes Act, 1947 ?	Yes
3.	Whether the second party proves the existence, genuineness, essentialities etc. for renewal and revision of MOU w.e.f. 1.1.08 along with justification	

	of payments & adhoc advances to all the workers ?	Yes
4.	Whether the second party proves that the demands to have uniform policies for all the workers irrespective of the contracts in the establishment of ONGC and to get the MOU renewed with pay revisions w.e.f. 1.1.08 are legal & justified ?	Yes
5.	Whether the second party proves the demand to advise M/s. ONGC management to release the advance of Rs.50,000/- per worker and to adjust it with arrears after implementation of pay revisions is legal & justified ?	As per final order
6.	Whether the first party proves that there is no legal binding on them to renew MOU with pay revisions with effect from 1.1.08 ?	No
7.	Whether the second party union are entitled for reliefs prayed in statement of claim ?	As per final order
8.	What award ?	As per final order

Reasons

Issue No.1, 3 & 6.

18. So far contentions go, the first party has challenged the maintainability of the reference mainly on the ground that it is delayed and the issues involved in the reference are settled vide FWP [MOS dt. 19.9.16]. So far delay is concerned, it is matter of record that the first party challenged the order of reference vide WP No. 5045 / 2018 before the Hon'ble Bombay HC which came to be rejected vide order dt. 29.1.19 and in the said order the Hon'ble HC has observed in para – 10 which is reproduced as under:

> "Apart from the question as to whether the settlement arrived at between some of the unions on one hand and petition contractors on the other hand is binding on the respondent No. 3 and interveners can be very well looked into by the tribunal in the proceedings before it."

19. The writ petition was dismissed. While dismissing the writ petition the Hon'ble HC has recorded in para – 8 of the order that,

> "It is further noted that in pursuance of communication addressed by the petitioner to the CLC conciliation officer vide notice dt. 15.9.16, came the matter for conciliation on 16.9.16 at 12.30 hours. Perusal of the minutes would reveal that in the said meeting the representative of the petitioner as well as respondent No. 3 were directed to do certain compliance. However, it appears that on the same day, the settlement was entered into by the representatives of certain unions and ONGC and 57 contractors of ONGC. The said settlement was to be arrived on same day, the petitioner neither informed the conciliation officer in the present proceedings about such settlement being arrived at. The conduct of the petitioner in not bringing to the notice of the conciliation in the present proceedings in our considered view is not a conduct befeating the employer who is organ on state and state within the meaning of article 12 of the constitution."

20. Fact remains that Dy. Commissioner also recorded that he had issued notices to the parties concerned calling upon them to attend the conciliation proceedings on various dates and finally conciliation proceedings were held on 8.10.15 in which all the parties to the dispute attended. In view of this merely because there was delay in conciliation would not make the reference untenable especially when the first party has challenged the order of reference before Hon'ble HC and that writ petition came to be dismissed.

21. The second ground raised by the first party is that the demands / terms of reference which is subject matter of the reference are covered by tripartite settlement dt. 19.9.16 signed and conciliation between the unions representing the workers employed by the various contractors and deployed for fulfillment of contractual obligations under the contract awarded to them on ONGC, respective contractors and the ONGC and the management to extend the benefits of the settlement to second party workers provided that they are ready and willing to accept the same. By signing the said tripartite settlement, the parties to the settlement have agreed to revise the wages w.e.f. 1.4.12 and the payment of lumpsum amount for the period from 1.1.08 to 31.3.12. Job security through the contractor was also agreed and therefore there remains nothing to adjudicate.

22. In this respect, it is to be seen whether FWP [MOS dt. 19.9.16] is binding on the workmen concerned in the reference. For it is explicit, that ONGC is not party to so called FWP [MOS dt. 19.9.16]. FWP dt. 19.9.16 is entered with contractors. This FWP lays compulsion on the workmen to withdraw the court cases and also to give undertaking for not raising any dispute in future thereby it takes away the legal rights of the workmen to pursue their cases of permanency and regularization.

23. The submission is made on behalf of the workmen that so called FWP is nothing but an attempt to reduce the wages. In para – 1.4 of the minutes of the said undertaking between the first party ONGC and unions, it is mentioned that wage difference between the minimum wages and MOU wages is very substantial i.e. MOU wages are almost double than minimum wages. Therefore it can be considered that FWP is certainly not in the interest of the workers since the workers have to withdraw all the cases pending in the court of law.

24. That apart the fact remains that second party No.3 is a registered trade-union and all the relevant records including the names of the concerned workmen with employment details joining the second party No.3 union membership receipts, registration certificates of the union are produced on record. They are impleaded as parties to the reference and that order has not been challenged.

25. As a matter of fact, it is admitted position that the service condition of the concerned workmen including their wage scale were governed by MOUs from time to time since 1992. These MOUs were signed between the unions representing the workmen and first party. The MOUs were signed on the line of settlement signed between BPT and its workmen. The same practice was continued in 1995 and 2000.

26. Even the witness of the first party in his cross examination has admitted that once the settlement is due, it is to be done. He even admits that the wages as per MOU is more than FWP. In such circumstances when it is brought to the notice that FWP is much less beneficiary to the workmen as per the benefits granted / availed by them in MOUs then MOS dt. 19.9.16 is not in the form of MOUs and therefore it cannot be said that after implementation of FWP there remains nothing to adjudicate in respect of demands of the concerned workmen.

27. Even then the Learned Counsel for the first party submitted that the settlement arrived at between some of the unions at one hand and contractors of ONGC on the other hand is binding on the concerned workers since majority of the contract employees had accepted the benefits of FWP. Submission is to the effect that 77.28% contract workers have agreed and received the benefits as per the terms of settlement of dt. 19.9.16 and therefore when majority of the workers have accepted the FWP and benefits are given to them then the FWP is having binding effect of award to all the parties to industrial dispute as per section 18 (3) (d) of the act and also binding to all the parties who were the employees to the estt. and part thereof on the date of dispute and all the persons who became subsequently employed in the estt. or part thereof as per section 18 (3) (d) of the act. He seeks to rely on the decision in case of IPCL Employees Association through General Secretary V/s. Reliance Industries & 4 Ors. – Civil Application No. 4709 / 2011 dt. 10.5.11.

28. From the facts of the present case it appears that reference is made by the Central Govt. dt. 15.4.14. The terms of reference are as given in the schedule as follows:

(d) "Whether the contract between Oil and Natural Gas Corporation [ONCG] and the existing contractor/s is a sham and bogus one and is a camouflage to deprive the concerned employees represented by the petitioner herein of benefits available to the permanent workmen of ONGC ?

(e) Whether the workmen represented by the petitioner – Union herein, employed through the contractor/s by ONGC should be declared as permanent workmen of ONGC ?

(f) What are the wages and other consequential benefits to be paid to the concerned employees ?"

29. The order came to be passed on the interim relief application in Ref. No. CGIT / 16, 17, 18 & 19 / 2005 wherein terms of the references are as above and as per order on interim application the order of status-quo has passed by the Hon'ble H.C. of Bombay is continued till disposal of all 4 references. There is reference in the said order in respect of order of the Hon'ble H.C. of Bombay in WP Nos. 2980, 81, 82 & 83 / 2004 in which the order dt. 19.3.04 was passed for status-quo. It appears therefore that the concerned workmen in all these references are protected by the order of status-quo.

30. It is also a submission on behalf of the second party that that the references No. 10 / 2003, 2/ 2003 have been decided in 2001 and awards have been passed by the Hon'ble CGIT-2 Mumbai in favour of respondent No.3 workers. The said awards were challenged by the first party vide WP No. 6216/ 2011, 8263 / 2015 and the WP No. 6216 / 2011 has been dismissed. In such circumstances when the status-quo order is there in respect of status of the concerned workmen in those references and the FWP as is introduced by the first party includs condition that the workmen shall withdraw their cases before CGITs and other courts then thereby FWP dt. 19.9.16 has taken away their legal rights to pursue the cases of permanency and regularization. In view of this, in my considered view, FWP, MOS dt. 19.9.16 is not binding on the workmen concerned. The facts in the present case are therefore quite distinct and distinguishable.

31. Realising this difficulty, the Learned Counsel for the first party submitted that the present unions were never made party before CGIT-1 in Ref. Nos. 16, 17, 18 & 19 of 2005 and they were also not parties to the WP Nos. 6216 / 2011 and 8163 / 2015 wherein status-quo order was passed. The submission is not acceptable since there is question of fairness of FWP and about the demands made by the concerned workmen. If that FWP is not binding on the workmen nor it covers the demands of present schedule of reference then it is not possible to accept the contention of the first party that there remains nothing to adjudicate in view of fact that tripartite settlements have arrived to revise the wages.

32. The fact remains that service conditions of the concerned workmen including their wage scales were governed by MOUs from time to time regularly since 1992 and applicable till December 2007. MOUs were signed before the unions representing the workmen and first party on the line of settlement signed between the BPT and its workmen and it had become long existing service conditions to have MOUs for further revision in wage scale after December 2007. Obviously therefore the first party was under obligation to sign MOU w.e.f. 1.1.2008.

33. Regarding the justification of the payments w.e.f. 1.1.2008, we have evidence to show that wages under MOUs are much higher than the minimum wages and this fact is admitted by first party in para – 1.4 on page 18 of Annexure – C to Ex.50 and Page 3 of Ex.44. Statement of wages as per FWP dt. 19.9.16 is calculated in Annexure – I, page 70 to 77. Statement of comparison is filed by the second party No.2 at Annexure – I page 78. The difference in the wages as per MOUs and wages actual received and wages as applicable and payable to the concerned workmen are mentioned and it is clear that same are much higher than the benefits of FWP dt. 19.9.16.

34. Here it is important to note that first party has examined Mr. Rajendra Mahadev Jadhav who affirmed that he is not aware about the facts which are stated in his deposition and that he has not personal knowledge about the MOUs. His evidence therefore does not help the first party to prove that the demands are covered by FWP.

35. Realising this, the Learned Counsel for the first party submitted that none of the members and contract employees of the unions stepped into witness box to substantiate their claim and there is no sufficient evidence on the part of workmen to prove the existence of facts. He seeks to rely on the decision in case of Vidhuadar V/s. Manikrao & Ors. – AIR – 1999 – SC – 1441 to submit that when the party to the suit does not appear into witness box then there is presumption that the case set up by him is not correct.

36. Here in the instant case Mr. Shaligram Mishra has adduced his evidence on behalf of second party and then there is evidence of Mr. Suryakant Bagal who is the Secretary of second party No.2 union. It cannot be said therefore that there is no evidence on behalf of the unions. Infact the evidence is to be weighed and not to be counted.

37. Considering all these facts I find that the second party has proved the existence, genuineness, essentialities for renewal of MOU and revision of MOU w.e.f. 1.1.08 along with justification of payments and that there is legal binding on the first party to review MOU with pay revisions w.e.f. 1.1.2008. The above issues are therefore answered accordingly as indicated against each of them in terms of above observations.

Issue No. 2.

38. In respect of this issue, it is needless to say that the order of the government by which the dispute is referred for adjudication is challenged by the first party union and the writ petition is dismissed with the observations that it is not open for the petitioner to complaint that the reference was not warranted. Even otherwise first party has not established this issue and hence this issue is answered in the negative.

Issue No. 4 & 5.

39. In view of my findings to the above issues, it has been established that first party is under obligation to renew MOUs with pay revision w.e.f. 1.1.08. The demands of uniform policies for all the workers irrespective of contracts is established in view of fact that as regards the status of contract workers there is status-quo to be maintained and in view of that the contract workers are also entitled to the benefits of the policies after renewal of pay revisions w.e.f. 1.1.08.

40. As regards the demand of advance of Rs.50,000/- per worker, it will have to be said that once there will be renewal of MOU with pay revisions w.e.f. 1.1.08, the workmen in the present reference would be entitled to get arrears arising out of implementation of MOUs. The demand as regards the advance would be justified by directing the first party to renew MOU with pay revision w.e.f. 1.1.08 within the stipulated period of two month. If that is not renewed within the period of 2 months from the date of order then concerned workmen would be entitled to interest @ 6% p.a. on the arrears and other benefits to which they are entitled to on implementation of MOU. In these terms issue No.5 is answered accordingly.

41. So far Issue No.4 is concerned, the second party has established that the demand will have uniform policies for all the workers irrespective of the contracts in the establishment of ONGC and to get the MOU renewed with pay revisions w.e.f. 1.1.08 are legal & justified. Hence the issue No.4 is answered accordingly in the affirmative.

42. In view of my findings to the above issues, I pass the following order.

ORDER

1. **The reference is allowed.**
2. **It is declared that the demands of the union to have uniform policies for all the workers irrespective of contracts in the establishment of ONGC and to get the MOU renewed with pay revision w.e.f. 1.1.2008 are legal & justified.**
3. **First party management is directed to enter into MOU with second party unions with pay revision w.e.f. 1.1.2008 and implement the same within 2 months from the date of order.**
4. **On renewal of MOU the first party management is directed to pay arrears arising out of implementation of MOUs within 2 months from the date of order failing which concerned workmen would be entitled to interest @ 6% per annum on the arrears and other benefits to which they are entitled to on implementation of MOU.**

M.V. DESHPANDE, Presiding Officer

Date: 17.07.2019

नई दिल्ली, 5 अगस्त, 2019

का. आ. 1444.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स हिन्दुस्तान कॉपर लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 21/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.08.2019 को प्राप्त हुआ था।

[सं. एल-43025/1/2010-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 5th August, 2019

S.O. 1444.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2012) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Hindustan Copper Limited and their workman, which was received by the Central Government on 02.08.2019.

[No. L-43025/1/2010-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. I, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act.1947

Ref. No. 21 of 2012

Employer in relation to the management of Hindustan Copper Ltd. ,

AND

Their workmen

Present : Sri Dinesh Kumar Singh, Presiding Officer

Appearances :

For the Employers : Shri D.K.Verma, ,Advocate

For the workman : Shri B.B.Mohenty, In person

State : Jharkhand.

Industry : Copper

Dated 17/07/2019

AWARD

By Order No.L-43025/1/2010-IR (M), dated.27/02/2012, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Mosabani Group of Mines under Hindustan Copper Limited in terminating the service of workman Shri B.B.Mohanty & 7 others(as per list attached) is legal and justified? What relief the workmen are entitled to?"

"Whether the said workers are entitled to exercise to an option for grant of immediate interim relief of ten months wages (at per revised rate) each on the form of an advance to be paid by the management during the hearing and to be adjusted against their future dues?"

List of workmen

Sl. No.	Name	Designation	B.No.	Date of termination of service
1.	B.B.Mohanty	Ex.Astt. Driller	B.No. 8996	16.08.2000
2.	Juliram Soren	Ex-time Keeper	B.No.10321	14.06.2000
3.	A.K.Shit	Ex-UDC	B.No.10031	31.01.2000
4.	S.D.Patar	Ex-Trammer	B.No.8267	31.01.2000
5.	S.N.Shaw	Ex-LDC	B.No.0328	14.06.2000
6.	S.P.Patar	Ex-Office Attdt.	B.No.1527	16.08.2000
7.	G.K.Mandal	Ex Compressor Operator	B.No. 2930	31.01.2000
8.	S.C.Dash	Ex-STS Ele. Engg.	B.No. 648	31.03.2001

2. The Reference case is received from the Ministry of Labour on 21.03.2012. After notice both parties appeared and subsequently the workman and the management filed their written statement on 05.01.2017, and 10.02.2017 respectively.Thereafter rejoinder and documents were filed by the workman. The management also filed their documents.

3. The written statement has been filed on behalf of workmen namely B.B.Monthy and others before the Tribunal on 05.01.2017. As per written statement of workmen, their case in brief is as follows:-

The workmen namely B.B. Mohanty and seven others being the employee of Mosabani Group of Mines HCL had been forced to accept the VRS and as such their termination from service is not legal and justified.

The management had not settled their valid claim such as VR benefits, Gratuity, Provident Fund, Bonus, LTC, EPF, Transfer benefit, Arrear of wages etc and had made unnecessary delay in payment causing mental agony to them and their family members.

The Ministry of Labour had approved VR Scheme in 1999 for employees of ICC vide letter No.- L-43024/3/99- IR (Misc) dated 23.12.1999 and consequently management of HCL had introduced the VR Scheme specially for closure of affected employees. In terms of said scheme employees had exercised their options of VRS. The management of HCL without complying the I.D .Act had issued notice for availing VR benefit with a conditional advise for availing either VR or face termination under reference HCL / ICC /ED /CPD/CLS /2000 dated 25.07.2000 to certain individual workman which had complied instruction of the management with the purpose to earn money from the employees through adjustment on pick and choose basis. The management officials had not followed any guide lines and procedure.

The industrial dispute between the management of HCL /ICC and its workmen namely Sri B.B.Mohenty and other represented by ICC worker's union was referred to ALC Chaibasa where it went unheard by the management. Subsequently RLC Ranchi provided best solution to settle the dispute, but the management failed to comply. The large number of employee were adjusted by quashing their option of VRS application and gradually upto last phase of closure. The allegation of unauthorized occupation of quarters by workmen is baseless, misleading and fictitious.

The 5th All India HCL wage settlement has been revised with effect from 01.11.97 so the workmen are entitled to avail the benefit of pay scale as they were in roll of company as on 01.11.97.

A Prayers been made by the workmen for making payment of their legal dues complying with the guidelines of VR Scheme.

4. On the other hand the management has submitted its written statement cum-rejoinder. As per written statement of management, its case in brief is as follows:-

The management had not terminated the service of eight workmen concerned and they had submitted their option for availing VRS which was accepted by the management. After getting permission by the Ministry of Labour & Employment, Govt. of India, under I.D Act 1947 Mosabani group of mines comprising Mosabani, Badia, Pathergora, Kendadih ,Surda, Concentrator plant including allied services where the disputant were employed were closed in phases during the period from 1997 to 2003 and as per provision of the I.D.Act workman were entitled for closure compensation but the management had given an opportunity to all the employees for availing benefit under VRS prevailing at that time which was almost three times higher in compare to closer /retrenchment compensation. Sri B.B.Mohenty and 7 other workmen chose to opt for VRS after putting their signature before two witness and their applications were duly considered by the management. Subsequently these workmen were released on VR from the service of the company. All the employees except the disputant had withdrawn VR benefits from the company after complying necessary formality but the present workmen had not complied the formalities and had not received VR benefits. The disputant had raised the matter before ALC (C) Chaibasa and RLC (C) Ranchi, but subsequently the dispute is referred by the ministry for adjudication.

The workmen are not entitled for payment of arrears arising out of pay revision of 5th All India wage settlement w.e.f. 01.11.97 as the memorandum of settlement dated 19.04.2006 does not stipulate any thing about payment of arrear on account of revision in respect of employees separated by VR.

The HCL is always ready to release the payment of all dues as per respective VR Scheme and concerned workmen had been requested to complete the necessary formalities but they had not yet complied with the formalities.

5. A rejoinder to the written statement of management has also been filed by the concerned workmen in which they have denied all the averments made in the written statement of management.

6.. The workman has examined only one witness. He is WW-1 Surendra Nath Sahu, The workmen has proved the following documents which are marked as exhibit:-

W-1–Approval letter of the Government of India for closure of Patharagora and Kendadih Mines (ICC) of M/S HCL

W-2 – Letter of HCL dated 25.07.2000 addressed to B.B. Mohanty to opt for VRS failing which termination from service

W-3 Letter dated 28.07.09 of ALC Chaibasa addressed to Director (P) M/S HCL to consider the demand of workmen sympathetically

W-4 Letter dated 27.08.09of A.L.C Chaibasa addressed to Director (P) HCL Kolkata

W-5 Letter dated 05.06.03of Ministry of Labour to CMD HCL East Singhbhum, Jharkhand

W-6 Gazette Notification of Govt of Jharkhand dated 15.06.2005

W-7 Notice for payment of Gratuity and for payment of interest in Gratuity Amount to B.B. Mohanty

W-8 Order of controlling Authority under P.G Act 1972

W-8/1 Circular dated 9th march 1995 of Chief Manager (p)

W-9 Circular dated 20.02.95 of Director (P)

W-10 Office Memorandum dated 08.12.2000

W-11 Letter of grievance to Director (P) dated 22/06/2010 written by B.B.Monthy

7 . The Management has examined only one witness. He is MW-1 Sanjay Shivdarshi. The management has not proved any document.

8. The WW-1 Surendara Nath Sahu has deposed before the Tribunal that he had gone through details of VRS dispute existing between management of HCL/ICC and its workmen namely B.B Mohanty and others. He has further deposed that after recording evidence and on the basis of report award may be passed on the basis of natural justice. In the Cross examination by the management he was deposed and he has been deposing on behalf of all the workmen and the claim of quarter has not been settled as yet. He has also stated that all the workman were forced to accept the gratuity by the management.

9. The MW-1 Sanjay Shivdarshi has deposed before the Tribunal that he has been working in ICC Ghatshila of M/S HCL and after getting permission by the Ministry of Labour Govt. of India under I.D Act Mosabani Group of mines comprising Mosabani , Badia, Pathergora, Kendadih ,Surda, Concentrator Plant including allied services were closed in phase manner during 1997 to 2003. He has also stated that the concerned workmen were entitled to receive only closer compensation but after showing good gesture management had given opportunity to all employees for availing the benefits under VRS prevailing at that time. He has further stated that the workman namely B.B.Mohanty and 7 others without any fears and in their own interest chose to opt their VRS before two witnesses and subsequently they were released on VR from the service of the company.

He has also deposed that the management had already paid Gratuity and provident fund to the concerned workmen and they are required to comply necessary formalities for receiving VR benefit but till today they had not complied .He had further stated that the company had always been ready to release all the dues as per respective VR Scheme and the management had requested them to complete the necessary formalities for payment of final dues. He has also stated that the demand of workman regarding payment of arrears arising out of pay revision of 5th all India wages settlement w.e.f. 01.11.1997 is not correct as the 1997 wage revision was implemented in 2006 for serving employees after gap of 10 years .

He has also stated that the memorandum of settlement dated 19.04.2006 does not stipulate any thing about payment of arrears on account of revision in respect of employees separated on VR.

In the cross examination he was deposed that the Government did not pass the order of termination of employees and there are closure of mines. He has also stated that there was notification of termination and the conditions were complied.

10. The workmen B.B.Mohanty arguing on behalf of himself and other workman has submitted that he and other concerned workman had been forced to accept VR which amounts to their illegal termination of service from HCL and they have not been paid Gratuity . PF and other retrial benefits by the company. He has also submitted that some of workmen who had been voluntarily retired from service were subsequently absorbed after cancelling their VRS so he and other workmen be also absorbed in service by cancelling their VR.

11. The Ld. Advocate Sri D.K.Verma appearing on behalf of management has submitted that the workmen Sri B.B.Mohanty and others had accepted VR Scheme on closure of mines in presence of two witness so they had not been illegaly terminated from service. He has also submitted that the management has made payment of Gratuity and P.F to the workmen but they had not complied necessary formalities for receiving other retrial benefits under VRS. He had also submitted that the management is ready to make full payment of all dues under VR scheme to the workmen. He has also submitted that the concerned workmen have not raised the issue at initial stage regarding absorption in service after cancellation of their VR so the argument of workmen is not tenable.

12. Now, in the light of argument advanced by both the parties , the tribunal will examine the oral and documentary evidence of both the Parties available on record for adjudicating the dispute under reference.

FINDINGS

13. It is the case of workman that they have been forced to take voluntarily retirement from the service of Mosabani group of mines of HCL, so their termination from the service is not legal and justified.

14. In this regard the W.W.1 Surendra Nath Shaw who is the only witness examined by the workmen has simply deposed that on the basis of report and on the basis of Principle of Natural Justice, award may be passed. He has deposed nothing on the fact of the case as well as on the claim of the workmen in his evidence.

On the other hand the MW1 Sanjay Shivdarshi has deposed that after closer of Mosabani group of Mines HCL, the workmen were entitled for closer compensation but the Management had allowed them to opt for VRS prevailing at that time and consequently all the workman had submitted VRS application and subsequently they were released on VRS from the service of the company.

15. It is required to mention here that management has submitted a photocopy of applications for voluntarily retirement of workman namely B.B. Mohanty, A.K. Shit, Surendra Nath Saw, Juliram Soren, Goutam kumar Mandal, Subhash Chandra Das, Shyama Pad Patar, Soso Dhar Patar which bear the signatures of respective workers as well as their witnesses. Further the workmen have not challenged these documents as not genuine before the Tribunal. Moreover the workmen have not filed any termination letter or order before the Tribunal.

16. The workmen have drawn attention of the Tribunal to the Exhibits W1 and W2. The exhibit W-1 is permission of Government for closer of Pathargoda and Kendadih mines with effect from 31/01/2000. The exhibit W-2 is a letter of General Manager Mosabani group of mines issued to workman B.B. Mohanti mentioning therein that D.D. department except essential services have been proposed to be closed and as such he has become surplus and there is no post/department available where he can be adjusted so his services are not required by the Company and he is liable to be terminated by the company. It has further mentioned that as a very special case Management has agreed to give him a chance to opt for VRS by 29/07/2000 failing which company shall be compelled to terminate his service.

17. It is important to mention here that the word "retirement" implies leaving or withdrawing from employment, and in the context of industrial relations, it implies termination of employer-employee relationship at the conclusion of pre-agreed terms/conditions or on attaining age of superannuation. Thus, voluntary retirement relates to a situation when a worker, for one reason or other, resigns from his job and thereby terminates the employer-employee relationship prior to the maturity of terms and conditions of employment. It is premature termination of employment.

18. Now workman B.B.Mohanty and seven other workmen had submitted their applications of VRS seeking their retirement voluntarily on 29/07/2000 and the same had been accepted by the HCL Company, so the workmen B.B Mohanty and seven others of this case had voluntarily opted for VRS and consequently their termination from service is legal and justified.

19. It is further case of the workmen that they had not been paid Gratuity, P.F. and other retrial benefits by the company.

20. In this regard WW-1 Surendra Nath Saw has deposed nothing except the grant of an award on the basis principles of Natural Justice and on the basis of report. In the cross examination he has admitted that he and other workers had been forced to accept the gratuity by the company.

On the other hand MW-1 Sanjay Shivdarshi has stated that the concerned workmen had received Gratuity and Provident Fund and they are required to comply the necessary formalities for receiving VRS benefit but till today the workmen have not yet complied the said formalities. He has also deposed that the management is ready to pay all the dues as per respective VRS Scheme.

At this stage it is relevant to mention here that the Management in its reply has categorically stated that HCL is always ready to release the payment of all the dues to the worker's as per V.R. Scheme. It has been also mentioned that the workmen have not been complying the necessary formalities for receiving V.R.S benefits, so the said amount has not been paid to them. It has been further mentioned that company is ready to release the payment of all dues to the workmen after complying all the formalities.

21. Now, at this stage it is proper to discuss the relevant documentary evidence of workmen available on this record. The exhibit W-3 is a letter of Assistant Labour Commissioner Chaibasa addressed to Director Personnel HCL, Kolkata for settling the grievance of workmen. The exhibit W-4 is a letter of Assistant Labour Commissioner Chaibasa addressed to Director Personnel for resolving the dispute at an early date. The exhibit W-7 is a notice to General Manager Hindustan Copper Limited for payment of Gratuity and exhibit W-8 is the order of Assistant Labour Commissioner Chaibasa holding B.B. Mohanty entitled to receive Rs. 46,966 towards simple interest @ 10% per annum on payable gratuity amount of Rs. 1,64,832.

22. In view of above discussion it appears that ALC Chaibasa has held entitlement of interest on payment of gratuity by B.B. Mohanty (Exhibit-8). Further WW-1 Surendra Nath Saw has admitted in his Cross-examination that he and other workmen had accepted gratuity, so there is evidence that workmen had already been paid their gratuity amount. Moreover there is also ending of management that workmen had been paid their provident fund amount.

Further it appears from the oral and documentary evidence that the HCL Management had not released other retrial benefits under VRS to the concerned workmen as they had not complied the necessary formalities.

23. It is also the case of the workman that they are entitled for benefits of pay scales under 5th All India Wage settlement revised with effect from 01/11/1997, and they are entitled to avail the benefits of Pay Revision as they were in roll of the Company on 01/11/1997.

24. In this regard the WW-1 has deposed nothing on the point of payment of arrears on the basis of 5th All India Wage settlement. However the MW-1 has deposed that the demand of the workman regarding payments of arrears arising out of 5th all India Wage settlement is not correct as the 1997 Wage Revision was implemented in April 2006, for serving employees. He has also deposed that the Wage Revision of 1997 was implemented with the approved of Govt. of

India and accordingly revised scale of pay was implemented with effect from 01/08/2004, whereas arrears of payment on amount of Wage Pay Revision would be decided separately in consideration with the Ministry.

The workmen have produced some of documents in their support on this point which are Exhibit W-8/1, W-9 and W-10.

The exhibit W-8/1 and W-9 are the circulars of HCL Company regarding payment of arrears of amount of Wage Revisions to the employees retiring under VR scheme. Further the Exhibit W-10 is the office memorandum regarding voluntarily retirement scheme.

The exhibit W-8/1 and W-9 are of the year 1995 whereas the 1997 Wage Revision was implemented in the year 2006 for the serving employees. Moreover the workmen have not produced any document showing that they are entitled for payment of Wages as per 1997 Wage Revision implemented in April 2006.

25. In view of above discussions the workmen are not entitled for arrears as per 1997 Wage Revision.

26. Lastly it is also case of the workmen that some of the workmen who had been voluntarily taken retirement from the service of HCL Company had been subsequently absorbed in service after cancelling their applications submitted under VRS, so they be also absorbed in the services after cancelling their VRS applications.

In this regard WW-1 Surendra Nath Saw has deposed nothing on this point.

Further the workmen have not submitted/filed any such documents showing therein that the HCL Company after cancelling application of VRS of some of the workers who had taken VRS absorbed in service.

In absence of Oral and Documentary evidence contention of workmen on this point is not tenable.

27. In reference it has been mentioned that whether the said workers are entitled to exercise to an option for grant of immediate interim relief of 10 months wages (as per revised rate) each on the form of an advance to be paid by the management during the hearing and to be adjusted against their future dues.

In this regard it is required to mention here that the workers have never made any claim for grant of immediate interim relief of 10 months wages in course of hearing of the case and now the case has concluded, so no finding is required to be made on this point.

28. In view of above discussion it is quite apparent that the workmen namely- (I) B.B. Mohanty (II) A.K. Shit (III) Surendra Nath Shaw (IV) Juliram Soren (V) Goutam Kumar Mandal (VI) Subhash Chandra Das (VII) Shyama Pad Patar (VIII) Soso Dhar Patar had themselves opted for Voluntary Retirement scheme and they submitted VRS application forms which had been accepted by the HCL resulting therein their removal from services which is legal and justified. However there is evidence that all the workmen had not been paid their retrial benefits by the HCL Company as they had not complied the necessary formalities.

29. Hence, the tribunal comes to the finding that termination of service of the workmen namely B.B. Mohanty and seven others is legal and justified as they had voluntarily opted for VRS. Further the tribunal also finds that the concerned workmen were not paid their retrial benefits as they had not complied the necessary formalities.

30. Hence the Tribunal directs the HCL Company to make payment of all the retrial benefits to the workmen namely (I) B.B. Mohanty (II) A.K. Shit (III) Surendra Nath Shaw (IV) Juliram Soren (V) Goutam Kumar Mandal (VI) Subhash Chandra Das (VII) Shyama Pad Patar (VIII) Soso Dhar Patar after completion of all the necessary formalities within thirty days of publication of the award.

This is my award.

D. K. SINGH, Presiding Officer

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